(24,926)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 643.

THE BUCKEYE POWDER COMPANY, PLAINTIFF IN ERROR,

vs.

E. I. DU PONT DE NEMOURS POWDER COMPANY, EASTERN DYNAMITE COMPANY, AND INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY,

against

E. I. DU PONT DE NEMOURS POWDER CO., *et al.*

Docket Entries.

1911, Sept. 18, Summons issued, returnable October 6, 1911.

1911, Sept. 27, Designation of Local Attorney filed.

1911, Oct. 6, Summons returned, served and filed.

1911, Oct. 6, Declaration filed.

1911, Oct. 26, Summons issued, returnable November 6, 1911.

1911, Oct. 30, Summons returned, served on Eastern Dynamite Co. and filed.

1911, Nov. 23, Rule to Show Cause why Declaration should not be stricken out, filed.

1911, Nov. 23, Rule to Show Cause why Service of Summons should not be set aside as to Laflin & Rand Powder Co., filed.

1911, Nov. 24, Special appearance of Frank S. Katzenbach, Jr., for Laflin & Rand Powder Co., filed.

1911, Dec. 2, Notice for taking testimony filed.

1911, Dec. 2, Acknowledgment of service of rule to show cause, filed.

1911, Dec. 11, Testimony of the Laflin & Rand Powder Co., on motion to set aside service of summons, filed.

1911, Dec. 11, Hearing on motion to set aside service of summons as to Laflin & Rand Powder Co., decision reserved.

1911, Dec. 11, Hearing on motion to strike out Declaration. Briefs to be submitted and day to be set for further argument.

1912, Mar. 28, Opinion on motion to strike out Declaration, filed.

1912, May 23, Order setting aside service on Laflin & Rand Powder Co., filed.

1912, May 23, Order allowing Amended Declaration, filed.

1912, May 23, Amended Declaration filed.

1912, June 29, Pleas of E. I. du Pont de Nemours Powder Co. filed.

1912, June 29, Pleas of Eastern Dynamite Co. filed.

1912, June 29, Pleas of International Smokeless Powder & Chemical Co., filed.

1912, Aug. 8, Replications to pleas filed (3).

1912, Dec. 21, Notice of Trial filed.

1913, Jan. 6, Notice, Motion for rule for discovery and inspection and Affidavit, filed.

1913, Jan. 6, Hearing on motion for rule for discovery and inspection. Decision reserved.

1913, Jan. 9, Demand for Bill of Particulars filed.

1913, Jan. 9, Acknowledgment of Service and Stipulation filed.

1913, Jan. 17, Depositions on part of plaintiff filed.
1913, Jan. 24, Depositions on part of plaintiff filed.
1913, Jan. 21, Continued for the Term.
1913, Feb. 4, Amended motion and affidavit for discovery and inspection, and Notice of Application filed.
1913, Feb. 11, Order to Show Cause on Motion for Discovery, etc., filed.
1913, Feb. 24, Hearing on Order to Show Cause. Order discharged.
1913, Feb. 24, Affidavit of Walter S. Gavan, filed.
1913, Feb. 24, Answer of Defendants to Petition filed.
1913, Mar. 10, Stipulation for appointment of Commissioner to take testimony, filed.
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1913, May 16, Order to Show Cause why defendants should not make discovery, filed.
1913, June 2, Supplementary Notice to Produce, filed.
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1913, Aug. 5, Notice of Trial filed.
1913, Aug. 6, Depositions on part of plaintiff and defendant taken before Special U. S. Commissioner (11).
1913, Aug. 18, Notice and Demand to Admit, filed.
1913, Sept. 9, Motion heard June 2, denied.

1913, Sept. 15, Depositions on behalf of Complainant filed.
1913, Sept. 15, Exhibit Books filed (2).
1913, Sept. 23, Subpoena ad Test filed.
1913, Sept. 24, Subpoena ad Test filed.
1913, Sept. 23, Trial.
1913, Sept. 24, Answer to demand for a Bill of Particulars filed.
1913, Sept. 24, Trial.
1913, Sept. 25, Trial.
1913, Sept. 26, Trial.
1913, Sept. 30, Trial.
1913, Oct. 1, Trial.
1913, Oct. 3, Trial.
1913, Oct. 7, Trial.
1913, Oct. 8, Trial.
1913, Oct. 10, Trial.
1913, Oct. 14, Trial.
1913, Oct. 15, Trial.
1913, Oct. 16, Trial.
1913, Oct. 17, Trial.
1913, Oct. 18, Subpoena ad Test, filed.
1913, Oct. 21, Trial.
1913, Oct. 22, Trial.
1913, Oct. 23, Trial.
1913, Oct. 24, Trial.
1913, Oct. 25, Subpoena ad Test, filed.
1913, Oct. 28, Trial.
1913, Oct. 29, Trial.
1913, Nov. 6, Trial.
1913, Nov. 7, Trial.
1913, Nov. 11, Trial.
1913, Nov. 12, Trial.
1913, Nov. 13, Trial.
1913, Nov. 14, Trial.
1913, Nov. 18, Trial.
1913, Nov. 19, Trial.

1913, Nov. 20, Trial.
1913, Nov. 22, Subpoena ad Test filed.
1913, Nov. 25, Trial.
1913, Nov. 26, Trial.
1913, Nov. 26, Subpoena ad Test filed.
1913, Dec. 2, Trial.
1913, Dec. 3, Trial.
1913, Dec. 4, Trial.
1913, Dec. 5, Trial.
1913, Dec. 9, Trial.
1913, Dec. 10, Trial.
1913, Dec. 11, Trial.
1913, Dec. 12, Trial.
1913, Dec. 16, Trial.
1913, Dec. 17, Trial.
1913, Dec. 18, Trial.
1913, Dec. 19, Trial.
1913, Dec. 30, Trial.
1914, Jan. 7, Trial.
1914, Jan. 8, Trial.
1914, Jan. 9, Trial.
1914, Jan. 13, Trial.
1914, Jan. 14, Trial.
1914, Jan. 15, Trial.
1914, Jan. 16, Trial.
1914, Jan. 21, Trial.
1914, Jan. 22, Trial.
1914, Jan. 23, Trial.
1914, Jan. 27, Trial.
1914, Jan. 28, Trial.
1914, Jan. 29, Trial.
1914, Jan. 30, Trial.
1914, Feb. 3, Trial.
1914, Feb. 4, Trial.
1914, Feb. 5, Trial.
1914, Feb. 6, Trial.
1914, Feb. 10, Trial.

1914, Feb. 11, Trial.
1914, Feb. 12, Trial.
1914, Feb. 13, Trial.
1914, Feb. 17, Trial.
1914, Feb. 18, Trial.
1914, Feb. 19, Trial.
1914, Feb. 24, Trial.
1914, Feb. 25, Trial. Verdict "No cause of Action as to all defendants."
1914, Mar. 13, Reasons for Rule to Show Cause for New Trial, filed.
1914, Mar. 13, Affidavits on Rule to Show Cause for New Trial, filed.
1914, Mar. 13, Rule to Show Cause why Verdict should not be set aside and New Trial granted, filed.
1914, Mar. 18, Stipulation extending time to take depositions on Rule to Show Cause, filed.
1914, Apr. 6, Order extending time for Bill of Exceptions, filed.
1914, Apr. 10, Deposition on Rule to Show Cause, filed.
1914, Apr. 10, Argument on return of Rule to Show Cause why new trial should not be granted. Motion denied. Rule discharged.
1914, Apr. 16, Order extending time for Bill of Exceptions, filed.
1914, Apr. 20, Rule dismissing Rule to Show Cause, and for Judgment final for defendant, filed.
1914, May 14, Order extending time for Bill of Exceptions, filed.
1914, Sept. 3, Order extending time for Bill of Exceptions, filed.

1914, Sept. 17, Notice of settlement of Bill of Exceptions, filed.

1914, Sept. 28, Order extending time for filing Bill of Exceptions, filed.

1914, Oct. 5, Notice of motion to extend time for hearing upon settlement of Bill of Exceptions, filed.

1914, Oct. 5, Hearing on motion to extend time for hearing upon settlement of Bill of Exceptions.

1914, Oct. 6, Stipulation as to Bill of Exceptions, &c., filed.

1914, Oct. 10, Proposed Bill of Exceptions filed (4 vols.).

1914, Oct. 14, Order extending time for filing Bill of Exceptions, filed.

1914, Oct. 6, Petition for Writ of Error filed.

1914, Oct. 7, Assignment of Errors filed.

1914, Oct. 7, Bond of Appeal filed.

1914, Oct. 7, Writ of Error allowed and issued. Copy filed.

1914, Oct. 7, Citation issued.

1914, Oct. 14, Citation returned, service acknowledged. Copy filed.

1914, Nov. 4, Order extending time to file record, filed.

1914, Nov. 9, Order extending time to defendants to file proposed amendments to proposed Bill of Exceptions, filed.

1914, Nov. 9, Notice of Motion and Stipulation filed.

1914, Dec. 9, Defendant's proposed amendments to plaintiff's proposed Bill of Exceptions filed (2).

1914, Dec. 12, Notice of Motion for Settlement of Proposed Bill of Exceptions, filed.

1914, Dec. 14, Hearing on Application for settlement of proposed Bill of Exceptions. Referred to C. S. Chevrier to adjust differences, &c.

1915, Jan. 13, Order that Bill of Exceptions be in form of question and answer, filed.

1915, Jan. 13, Hearing on Settlement of Bill of Exceptions. Bill of Exceptions partly settled. Adjourned to Jan. 19th.

1915, Jan. 26, Continuation of hearing on Settlement of Bill of Exceptions. Continued.

1915, Jan. 26, Continuation of hearing on settlement of Bill of Exceptions. Continued.

1915, Feb. 15, Taking of Testimony on settlement of Bill of Exceptions.

1915, Mar. 15, Notice of Motion for Settlement of Bill of Exceptions.

1915, Mar. 15, Hearing on Motion for Settlement of Bill of Exceptions.

1915, Mar. 17, Bill of Exceptions filed as of October 4, 1914.

1

Amended Declaration.

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEW JERSEY,

Of the Sixth Day of October, 1911.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,
against
E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
Defendants.

2

Action Under Section 7 of the Act of Congress of July 2, 1896

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TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT:

E. I. du Pont de Nemours Powder Company (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), the defendants in this suit, were summoned to answer the Buckeye Powder Company, the plaintiff herein, in an action for damages under the Seventh Section of the Act

of Congress of July 2d, 1890, known as the Sherman Act; and thereupon the plaintiff by McFarland, Taylor and Costello, its attorneys, complains as follows, to-wit: Whereas,

First. That plaintiff is and has been ever since on or about the 28th day of January, 1903, a corporation duly organized and existing under the laws of the State of Delaware; that the principal purpose of the incorporation and organization of
5 plaintiff was to carry on the business of manufacturing and selling powder and other explosives and particularly black blasting powder; that it began such business on or about the first day of September, 1903, and continued in and conducted said business down to the 19th day of September, 1908, and during all of said period its business was interstate and conducted in the States of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Misouri, Montana, Kansas, Nebraska, Colorado, Wyoming, West Virginia and Indian Territory and the foreign country of Mexico; that during all of said period it
6 manufactured black blasting powder in the State of Illinois for the purpose of selling the same in the states, territory and foreign country above mentioned and the same was sold and delivered to purchasers in said states, territory and foreign country.

Second. That the defendant E. I. du Pont de Nemours Powder Company is and has been ever since the 19th day of May, 1903, a corporation organized and existing under the laws of the State of New Jersey; that the defendant, the Eastern Dynamite Company, is, and was during the times hereinafter mentioned, a corporation organized and doing business under the laws of the State of New

Jersey; that the defendant, the International Smokeless Powder and Chemical Company, is, and was during the times hereinafter mentioned, a corporation organized and existing under the laws of the State of New Jersey; and the defendants and each of them are, and were during the times hereinafter mentioned, engaged in interstate trade and commerce in the shipment and sale of gunpowder and black blasting powder and other high explosives among the States and Territories of the United States and in foreign Countries. 8

Third. That certain corporations, to-wit: E. I. du Pont de Nemours & Company (a corporation of Delaware), E. I. du Pont de Nemours & Company (a corporation of Pennsylvania), du Pont International Powder Company (a corporation of Delaware), Delaware Securities Company (a corporation of Delaware), California Investment Company (a corporation of Delaware), Delaware Investment Company (a corporation of Delaware), Hazard Powder Company (a corporation of Connecticut), 9 Laflin & Rand Powder Company (a corporation of New York), Fairmont Powder Company (a corporation of West Virginia), Judson Dynamite and Powder Company of California (a corporation of California), and certain individuals, namely, Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Henry F. du Pont, Irenee du Pont, Francis I. du Pont, Victor du Pont, Jr., Arthur J. Moxham, Hamilton M. Barksdale, Edmond G. Buckner and Frank L. Connable and Jonathan A. Haskell, residents of the State of Delaware (as officers and directors of the defendants mentioned in the last preceding paragraph, and of the corporations mentioned in this paragraph, or some of them), were

co-conspirators with the defendants herein in the unlawful and wrongful acts and conduct hereinafter complained of.

Fourth. Plaintiff shows that for a long time previous to the year 1902, to wit, for a period of more than thirty years and by means of many agreements and the adoption of many forms, certain manufacturers and vendors of powder and other explosives in the United States and foreign
11 countries and including some of the defendants above mentioned, had attempted to establish, and in a measure had succeeded in establishing, a more or less complete monopoly of said trade in their own hands; that by forcing their competitors out of business or coercing them into a union with them, by imposing fines and penalties for violation of said agreements to monopolize said trade, by limiting the output of the various parties to said agreements, by apportioning the share of business among the said parties and by dividing the said
12 trade among themselves, by fixing the prices of said powder and other explosives arbitrarily and not according to any law of supply and demand, the said manufacturers and vendors became and continued to be an unlawful combination for the purpose of restraining interstate trade and commerce within the United States and foreign countries; that on or about the 9th day of February, 1902, the defendants, Thomas Coleman du Pont and Pierre S. du Pont, with the intent and purpose of securing a more complete monopoly and a more effective control of the power trade in the United States and foreign countries, caused the said E. I. du Pont de Nemours and Company to be organized under the laws of the State of Delaware as a corporation under the name of the E. I. du Pont de

Nemours Company (which name was subsequently changed to E. I. du Pont de Nemours and Company); and thereupon the said defendant, E. I. du Pont de Nemours and Company, entered upon the policy of securing the actual physical or legal control and ownership of all the plants, manufactories and tangible property theretofore partially controlled by them, or theretofore co-operating with them, to monopolize the powder trade aforesaid, and to vest the absolute ownership thereof in said E. I. du Pont de Nemours and Company and to dissolve and destroy their entity, so that there could not be any interference with the plans of said E. I. du Pont de Nemours and Company, to completely monopolize the powder trade in the United States and foreign countries; that in pursuance of said policy and purpose the said E. I. du Pont de Nemours and Company thereafter succeeded in absorbing or acquiring control of a large number of said plants, manufactories and tangible property and of the corporations owning and operating the same, and plaintiff further shows that notwithstanding the success of said E. I. du Pont de Nemours and Company, in its efforts to monopolize the said trade, not being satisfied with the completeness of its monopoly, and seeking to make said control absolute, on the 19th day of May, 1903, caused the defendant E. I. du Pont de Nemours Powder Company to be organized under the laws of the State of New Jersey with a capital stock of Fifty million ($50,000,000) dollars to act as a holding company of the various properties, manufactories and plants which had already been or might thereafter be acquired by it; and thereupon the said E. I. du Pont de Nemours and Company, in consideration of the issuance to it of Thirty million two hundred thousand ($30,200,000) dollars par

value of the capital stock of the said defendant du Pont de Nemours Powder Company, sold, assigned and transferred to said defendant E. I. du Pont de Nemours Powder Company, all the right, title and interest which it possessed in or to any of the plants, manufactories or properties hitherto acquired by it, and thereby placed within the absolute control of the said defendant E. I. du Pont de Nemours Powder Company the property, plants and manufactories and the business of the following
17 named corporations and thereupon caused said corporations to be disolved and destroyed and removed from the business of manufacturing and selling powder and other explosives, to wit: Blue Ridge Powder Company, U. S. Dynamite Company, Laflin Powder Manufacturing Company, Hudson River Powder Company, Acme Powder Company, Columbia Powder Company, Dittmar Powder & Chemical Company, Wolf Dynamite Company, Rock Glycerine Company, Sterling Dynamite Company, Atlantic Dynamite Company of New Jersey, Atlantic Dynamite Company of New York,
18 Hecla Dynamite Company, Hercules Powder Company, Repauno Chemical Company, Repauno Manufacturing Company, Clinton Dynamite Company, A. Kirk & Son Company, Robina Fuse Company, Weldy Dynamite Company, Oliver Dynamite Company, Monarch Powder Company, Forcite Powder Company of New Jersey, Forcite Powder Company of New York, New York Powder Company of New Jersey, New York Powder Company of New York, Electric Powder Company, Joplin Powder Company, Shenandoah Powder Company, Brooklyn Glycerine Manufacturing and Refining Company, Pennsylvania Torpedo Company, A. S. Speece Powder Manufacturing Company, Giant Manufacturing Company, Standard Exporting Company, Limited;

Metropolitan Powder Company, Climax Powder Manufacturing Company, Explosives Supply Company, American Stor. and Deliv. Company, Atlantic Manufacturing Company, Hudson River Wood Pulp Manufacturing Company, National Torpedo Company, Producers' Powder Company, Chattanooga Powder Company, Lake Superior Powder Company, Ohio Powder Company, American Forcite Powder Manufacturing Company, Hecla Powder Company, Anthracite Powder Company, Globe Powder Company, Marcellus Powder 20
Company, H. Julius Smith Electric Fuse Company, James Macbeth and Company, Phoenix Powder Manufacturing Company, Conemaugh Powder Company, Enterprise High Explosive Company, Schaghticoke Powder Company, California Vig Powder Company, California Powder Works, Western Torpedo Company, Oliver Powder Company, Thompson Torpedo Company, E. I. du Pont Company, King Mercantile Company, Mahoning Powder Company, and thereupon the said E. I. du Pont de Nemours Powder Company became possessed of 21
a controlling interest in the capital stock of each of the following-named corporations, to wit: Hazard Powder Company, The Laflin and Rand Powder Company, The Eastern Dynamite Company, The Fairmont Powder Company, The International Smokeless Powder and Chemical Company, The Judson Dynamite and Powder Company, The Delaware Securities Company, The Delaware Investment Company, the California Investment Company, the E. I. du Pont de Nemours Company of Pennsylvania and the International Powder Company; and plaintiff further shows that Thomas Coleman du Pont, Pierre S. du Pont, Alexis I. du Pont, Alfred I. du Pont, Eugene du Pont, Eugene E. du Pont, Henry F. du Pont, Irenee du Pont,

Francis I. du Pont, Victor du Pont, Jr., Jonathan A. Haskell, Arthur J. Moxham, Hamilton M. Barksdale and Frank I. Connable, as officers and directors of the said defendant E. I. du Pont de Nemours Powder Company, and the defendant, International Smokeless Powder and Chemical Company, or one of them, and the defendant, Edmond G. Buckner, as a director of the said defendant, International Smokeless Powder and Chemical Company, and each and all of them, acting from
23 time to time within the scope of their authority as such officers and directors, instituted, directed, ratified and approved of the various unlawful and wrongful acts hereinbefore and hereinafter complained of; and plaintiff further shows that by reason of the matters and things alleged and set forth in this paragraph the defendants and the various other corporations and individuals hereinbefore in paragraph Third named, and acting as co-conspirators with the defendants, succeeded in establishing within themselves, and have ever since maintained
24 a practically complete monopoly in interstate trade in powder and other explosives amounting to about ninety-five per cent. (95%) of said entire trade, and ever since have been and now are engaged in a combination and conspiracy to unreasonably restrain and monopolize said trade throughout the United States and foreign countries, and have suppressed competition and have fixed prices of powder and other explosives arbitrarily and unreasonably, and have driven independent competitors out of business or have coerced them into a sale to or union with said unlawful combination, and have unreasonably restrained trade and commerce among the several states of the United States and with foreign nations, and have committed various other unlawful and wrongful acts as hereinafter set

forth, all in contravention of the laws of the United States and particularly the act of Congress of July 2d, 1890, and in derogation of the rights of plaintiff to its great damage, as hereinafter set forth.

Fifth. Plaintiff shows that a short time previous to the date when plaintiff was incorporated and organized as hereinbefore set forth, one R. S. Waddell, who afterwards became its president and general manager, conceived the idea of organizing and afterwards perfected the organization of plaintiff for the purpose of entering into the business of the manufacture and sale of black blasting powder, and that his active experience and acquaintance with the powder trade in the United States and foreign countries for a period of more than thirty years enabled him to determine with scientific accuracy the best and most practical field for succesful operation of a plant with which to conduct such business; that the defendants well knew of the experience and ability of said Waddell as a powder expert and salesman, and well knew that his acquaintance with the powder trade was wide and accurate; that as soon as the said defendants became aware of the purpose of the said Waddell to organize plaintiff and engage in the manufacture and sale of black blasting powder, and with the intent and purpose to perpetuate the monopoly which they had already acquired as aforesaid, entered into a conspiracy to prevent him from carrying out his said purpose and the officers and agents of the said E. I. du Pont de Nemours and Company endeavored to dissuade the said Waddell from carrying out his said purpose, failing in which they then offered to join him in conducting said business upon the condition that he would place the said E. I. du Pont de Nemours and Company in

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control of said plaintiff's business and affairs, and failing to obtain the consent of the said Waddell thereto, the said officers and agents then endeavored to influence him to cause the plant of the plaintiff to be located in a sparsely settled region where the development of the market for black blasting powder had been comparatively slow and not of sufficient consequence to justify the hope of prosperous returns; finding that the said Waddell could not be moved in his purpose to select
29 a location and site for the plant and mills at a point where the powder trade was already largely developed and rapidly developing, the said officers and agents thereupon immediately formed a plan to prevent him from carrying out his purpose of organizing plaintiff and engaging in the business of manufacturing and selling powder and other explosives, thus planning to retain the monopoly of said trade to the said E. I. du Pont de Nemours and Company and their co-conspirators, aforesaid; and with this end in view they placed detectives on
30 the track of the said Waddell to shadow him throughout the United States as he should journey from place to place in search of a location, to keep them advised of his movements and to enable them through their emissaries to forestall him in obtaining a location and to create opposition to the location of plaintiff's plant in such place as might be decided upon, by instilling fear into the minds of the people thereabouts, and also, if need be, by entering into competition with the plaintiff for the purchase of sites and bidding up the price of said property, not, however, with any purpose to make use of the same themselves, but to prevent the entrance of an independent competitor for the powder trade in the states, territory and foreign country aforesaid, and with a view of altogether preventing

plaintiff from finding a site for its mills and plant; that by reason of the matters and things set forth in this paragraph the said Waddell was compelled to travel from place to place with great secrecy, and sometimes under assumed names, and to adopt various disguises to avoid being interfered with, and the said Waddell was thereby compelled to spend much time and money in an effort to avoid the unjustifiable surveillance to which the said defendants subjected him while in the pursuit of a lawful calling and while engaged in the rightful 32
exercise of the privileges guaranteed to citizens of the United States by the laws of the land.

Sixth. Plaintiff shows that by reason of the dangerous nature of powder and other explosives, the matter of freight rates and transportation facilities are important and often controlling factors in determining the price or prices at which the same can be delivered to the customer profitably and economically; and for this reason the powder trade of the United States and adjoining countries, if left free to adjust itself naturally, 33
would tend to the establishment of many local plants and to active competition between manufacturers and would thereby result in great benefit to the consumer and would thereby tend to maintain prices at such figures as would produce reasonable and living profits to the manufacturer; that this is particularly true of black blasting powder, which is most commonly used in coal mining operations; that long experience has demonstrated that one pound of such powder will be consumed on the average to each ton of coal mined; plaintiff further shows that by reason of the matters and things set forth in this paragraph and by reason of the fact that there was previous to the year 1903,

a great extension of coal mining operations and a large and rapidly developing trade in black blasting powder in the States of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Missouri, Montana, Kansas, Nebraska, Colorado, Wyoming, West Virginia and Indian Territory and the foreign country of Mexico, the promoters of the business in which plaintiff was organized to engage, with the intent and purpose to supply a natural market and demand and to conduct a legitimate and profitable
35 business in the manufacture and sale of black blasting powder, selected a point near the City of Peoria, State of Illinois, as the most favorable location for its plant and mills and constructed the same at said point; that said City of Peoria was at said time and ever since has been favorably situated with respect to railroad facilities and transportation, and has had and still has the benefit of favorable freight rates due to competitive transportation conditions; that by reason of the superior transportation facilities and freight rates thus af-
36 forded, plaintiff was assured of a vast market for its product as aforesaid; and plaintiff further shows that the natural and normal increase of the consumption of black blasting powder in said states, territory and foreign country, for a long time previous to the location and construction of its said plant and mills was much more than sufficient to have absorbed the entire output thereof, working at their full capacity, without diverting any of the trade already established from the usual channels of supply and without disturbing any existing business of any other manufacturer thereof.

Seventh. Plaintiff shows that by reason of the favorable location of its mills and plant as hereinbefore alleged and by reason of the superior

facilities of transportation and freight rates afforded thereby, it was able to meet the requirements of consumers of black blasting powder in the states, territory and foreign country above mentioned, at the lowest price at which the same could be made and supplied and leave a fair and living profit; that it was willing and able to engage in fair and open competition for the said trade with any other manufacturer or manufacturers of black blasting powder; that defendants and their co-conspirators well knowing this fact, but being desirous to prevent fair and open competition or in fact any competition at all and with the design and intent to coerce plaintiff into a combination with the defendants and their co-conspirators or to drive it out of business and thereby stifle competition in said district, entered into a conspiracy with each other, whereby all the co-conspirators aforesaid except the defendant E. I. du Pont de Nemours Powder Company agreed to retire from the business of supplying or competing for the said trade in said states, territory or foreign country and thus leave the said E. I. du Pont de Nemours Powder Company a clear field to carry on a war of extermination against plaintiff and drive it out of business; and in pursuance of said agreement and as part thereof an arrangement was made between said conspirators whereby all losses were to be apportioned among them ratably, and whereby the said defendant E. I. du Pont de Nemours Powder Company should be compensated for all losses which it might incur or suffer in carrying on such war of extermination; thereupon the said defendant E. I. du Pont de Nemours Powder Company appointed a committee (known and designated as "The Peoria Committee") to have charge of and conduct said fight against plaintiff, and in further pursuance of

said arrangement for the purpose of enabling the defendant E. I. du Pont de Nemours Powder Company to conduct a more effective campaign against your petitioner, all of the other defendants withdrew their agencies from said City of Peoria and ceased all effort to secure any of the trade in black blasting powder for themselves within said states, territory and foreign country, taking in lieu thereof certain allotments of trade elsewhere to compensate them for the trade thus yielded; that thereupon the defendant E. I. du Pont de Nemours Powder Company began and continued a most determined, bitter and disastrous warfare against plaintiff to destroy its business and prevent it from acquiring any new business and to drive it out of business entirely, as more particularly hereinafter set forth.

Eighth. Plaintiff further shows that the defendant E. I. du Pont de Nemours Powder Company instituted shortly after the organization of said company and maintained and still maintains, as a part of its organization for the more effective prevention and suppression of competition, a department or bureau known as the "Bureau of Information" (sometimes called "Trade Reports Bureau"); that the headquarters of said bureau was established and has since been kept at the head office of said defendant in the City of Wilmington, Delaware; that said bureau has maintained and still maintains a system of agents, emissaries, spies and detectives throughout the various states and territories of the United States and in some foreign countries for the purpose of collecting and reporting facts, rumors and information of every kind concerning the trade in powder and other explosives and concerning the various consumers and manufacturers of the same; that said agents, emissaries,

spies and detectives are from time to time instructed and required to collect such facts, rumors and information in any manner which they may deem necessary for that purpose and without regard to the means employed; that by reason of said instructions and requirements the said agents, emissaries, spies and detectives have resorted to various questionable and corrupt practices for the purpose of obtaining such facts, rumors and information, and said defendant has thereby built up and maintained a system of espionage upon the business and private affairs of persons, corporations and associations engaged in legitimate occupations throughout the United States and foreign countries entirely at variance with the genius of the government of the United States and in contravention of the statutes and laws of the land; that from time to time a vast amount of facts, rumors and other information has been collected and forwarded to said Bureau of Information and the same has been tabulated and arranged into three divisions; designated as White, Yellow and Red Divisions; that the White Division contains reports concerning consumers and manufacturers who are classed as loyal to the said defendant E. I. du Pont de Nemours Powder Company and whose loyalty may be depended upon under all circumstances; that the Yellow Division contains reports of consumers and manufacturers who are considered as friendly to said defendant but untrustworthy and whose movements must be watched and who must be dealt with as the circumstances may seem to require from time to time and who are kept under close surveillance and espionage to prevent the loss of their trade, support and co-operation; that the Red Division contains reports of consumers and manufacturers known to be independent and who

are ready and willing at all times to enter the open market and encourage competition in the powder trade, and who are, therefore, classed as enemies to said defendant and dangerous to its monopoly, and who are marked for the most vigorous methods which can be brought to bear to coerce them into a union with the defendants or to completely drive them out of business, and the agents, emissaries, spies and detectives of the E. I. du Pont de Nemours Powder Company are re-
47 quired to increase their vigilance and espionage and seize upon every opportunity to annoy, embarrass and injure them in such business; and for this purpose such agents, emissaries, spies and detectives are authorized to stir up strife between employers and employees, to encourage creditors to institute legal proceedings, to create false and malicious rumors concerning their solvency and generally do any and every thing which would tend to discredit and embarrass them, and to make full reports of all such false and fictitious condi-
48 tions thus sedulously and wickedly created by themselves; that it has long been the practice with said Bureau of Information to select certain facts, rumors and other information and spead them broadcast among the powder trade where they would produce the greatest damage to such consumers and manufacturers included within the class known as the Red Division in order to force them to ally themselves with said defendant and cooperate with it in maintaining its monopolistic control of the powder trade or drive them out of business entirely; and plaintiff further shows that plaintiff and its customers were classed by said Bureau with the division known as the Red Division and that every method and device known to the said bureau and its agents, emissaries, spies

and detectives was employed to prevent it from acquiring any portion of the powder trade and to prevent consumers of black blasting powder from purchasing the same from it and to induce its customers to abandon it and to injure and destroy its credit by creating distrust among its creditors, and by circulating false and malicious rumors regarding its solvency and by circulating false and malicious statements concerning the quality of the powder manufactured by petitioner and by stirring up strife between miners and operators thereby to induce 50
said miners to refuse to use the powder manufactured by plaintiff, and by secretly sending its emissaries and spies into plaintiff's mills and plant to learn the secrets of its business and tampering with its processes and by employing the agents of various transportation companies to furnish information of the consignments from plaintiff's mills and the names and addresses of the consignees and thereafter inducing said consignees to reject said consignments by offering to furnish them black blasting powder below the price contracted with 51
the plaintiff and below any price which plaintiff might see fit to offer, and below the actual cost of said powder if necessary to secure said trade; all as more particularly hereinafter set forth.

Ninth. Plaintiff shows that there was during the period while plaintiff was engaged in the manufacture and sale of powder, an Association known as the "Coal Operators' Association," composed of the owners and operators of coal mines in the State of Illinois and other States, and another Association known as the "Miner's Union," composed of miners engaged in mining said mines; that annually, or as often as might appear to be necessary, an agreement was regularly entered into between

52 *Amended Declaration*

said Associations to the effect that the members of the Operators' Association should originally purchase all powder necessary to be used in the mining operations to be carried on in all mines owned or operated by them, and that the members of the Miners' Union would buy of the Operators all the powder used by them in performing the work in such mines, at the agreed price of One Dollar and Seventy-five Cents ($1.75) per keg; that said price was fixed and unchangeable during the life of said
53 agreement regardless of the price at which the Operators might be able to purchase said powder; that these agreements have sometimes produced discord between the members of the two Associations and have sometimes led to claims of injustice on the part of the Miners against the Operators by reason of the variation in the prices at which the Operators may have been enabled to purchase the powder from the manufacturer; and plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, at various times after plaintiff's
54 plant went into operation, employed evilly-disposed persons to enter the mines of Operators who had made purchases of black blasting powder of plaintiff, for the purpose of stirring up discontent among the Miners and to instill into their minds prejudice against said powder, and to cause them to refuse to use the same, so as to induce the purchaser to reject the same, intending and planning thereby to secure to itself the business of said Operators; and in some instances these methods succeeded in producing boycotts by said Miners against the powder manufactured by plaintiff, and by reason of such wrongful and wicked conduct, certain consignments of powder from plaintiff's mills were from time to time rejected and returned, and further purchases were discontinued through fear of

causing disagreements and disturbances which would lead to shut-downs and idleness; plaintiff further shows that such a condition was the more easily created by reason of the fact that the Miners' Union always reserved the right under said agreements to select the grade and make of powder which the Operator was bound to purchase; and in order to foment unjust opposition and strife, certain persons were employed by said defendant, E. I. du Pont de Nemours Powder Company to travel from place to place and mingle with the miners of the 56
various coal mines to insidiously induce them to believe that it was for their interest to reject the powder manufactured by the plaintiff, and certain influential miners were employed to make use of their influence with their fellow-workmen to induce them to boycott such powder; that in some cases intoxicating liquors were distributed among said miners, sometimes clothing, food and household articles were distributed among said miners and their families, and sometimes cash was paid to various of said miners to obtain their co-operation and 57
influence with their fellow-workmen as aforesaid; that these methods were sometimes carried to such an extent as to become open and public scandals, tha by reason of the matters and things alleged in this paragraph, the good order and peace of the community was disturbed and set at naught, and the morals of said employees corrupted and the coal mining business of said operators was disturbed, and serious loss was occasioned and threatened to them and the said operators almost invariably yielded to the demands thus fictitiously created and refused to make further purchases from plaintiff.

Tenth. Plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, on various occasions caused various persons to seek employ-

ment with plaintiff for the purpose of entering its mills and plant and obtaining its manufacturing and business secrets, and plaintiff being ignorant of the purpose of said persons in seeking employment and not suspecting their duplicity and fraud and being desirous of obtaining their services, gave employment to some of such persons and particularly to one Colburn, who was employed as a competent and trustworthy person to act as Superintendent of its plant and mills; that subsequently plaintiff
59 ascertained that said Colburn prepared frequent reports of its business and of the various processes used by it and of the amount of powder manufactured and shipped by it and of the names and addresses of the consignees, all of which were regularly transmitted to the defendant, E. I du Pont de Nemours Powder Company at Wilmington, Delaware, and in other instances the said defendant E. I. du Pont de Nemours Powder Company succeeded in enlisting the services of employees of various railway companies receiving powder from
60 plaintiff for transportation to its customers (particularly certain employees of the Chicago, Burlington and Quincy Railroad Company) to furnish said defendant with daily telegraphic reports of all shipments made by plaintiff from its mills and passing through their hands; that sometimes in consideration of said services said defendant agreed to pay and did pay said railway employees One Dollar ($1) for each telegram and Five Dollars ($5) for each letter sent to the said defendant or any of its agents or emissaries and carrying any such information; and said defendant agreed to and did pay others of said employees various sums of money by way of salary; and plaintiff further shows that immediately, and continuously for a long period of time, the information so obtained

was made use of by the said E. I. du Pont de Nemours Powder Company in various ways to induce said consignees to reject shipments from, and to abandon, plaintiff and thereafter to purchase black blasting powder of said defendant exclusively, and in some cases such customers were thereby induced to desert plaintiff, and in other cases to reject shipments already consigned.

Eleventh. Plaintiff shows that the said E. I. du Pont de Nemours Powder Company, as a part of 62
its plan to create and maintain a monopoly in the powder trade of the United States and foreign countries and intending to ruin plaintiff and drive it out of business, sought to make it impossible for plaintiff to secure any trade whatsoever in said States, Territory or foreign country by inducing each consumer of black blasting powder therein to enter into a secret contract with said defendant whereby said consumer bound himself to give the said defendant his exclusive trade in said powder for a term of years, varying from one to five years; 63
that said contracts were secured sometimes by promises of special privileges and prior right over other persons for delivery; sometimes by threats to deprive such consumer of the right to purchase other grades of powder and explosives not manufactured by the plaintiff; sometimes by misrepresenting the capacity of plaintiff's mills and plant; sometimes by circulating false and damaging statements through its agents and emissaries concerning accidents at plaintiff's mills and plant, sometimes by false and malicious statements concerning the quality of plaintiff's powder, sometimes by offers of financial assistance to such consumer, sometimes by stirring up strife among the employees of such consumer a hereinbefore alleged, and by vari-

ous other unlawful and wicked conduct; and plaintiff further shows that the terms of said contracts, and even the existence thereof, were in all cases made strictly confidential for the reason that the said defendant well knew that said contracts were unjust, unfair and unlawful, and that they were especially contrary to the act of Congress known as the Sherman Act, and made in defiance of said act, and with deliberate purpose to evade its provi-
65 sions; that said contracts provided for secret rebates based upon a schedule of the amount of powder purchased annually as follows, to wit: a purchase of more than five hundred (500) and less than one thousand (1,000) kegs annually entitled the purchaser to a rebate of five (5) cents per keg; more than one thousand (1,000) and less than twenty-five hundred (2,500) kegs a rebate of ten (10) cents per keg; more than twenty-five hundred (2,500) and less than five thousand (5,000) kegs a rebate of (15) cents per keg; more than five thousand (5,000) and less than ten thousand (10,000) kegs
66 a rebate of seventeen and one-half (17½) cents per keg; more than ten thousand (10,000) and less than twenty-five thousand (25,000) kegs a rebate of twenty (20) cents per keg; over twenty-five thousand (25,000) kegs a rebate of twenty-two and one-half (22½) cents per keg; and plaintiff further shows that in cases where the consumer could not be induced to contract as aforesaid, a "Special Cut-Price" was issued for his benefit, of which he was permitted to take advantage at any time he desired, to the same effect as if he had signed such contract, and by reason of the fact that such special price was far below a fair and living price for said powder and did not afford a fair profit therefor, or in fact any profit whatsoever, it was impossible for plaintiff to compete for the trade of such consumer,

and his trade went to said defendant as effectively as if covered by a formal contract; and plaintiff further shows that in those cases where a customer was already under contract with the said defendant at the time when plaintiff began business, the said defendant, realizing the insufficiency of said contracts to bind said consumer lawfully, and in order to forestall plaintiff in its efforts to secure the trade of said consumer in open and free competition, voluntarily increased the secret rebates specified therein, and made such increases effective 68
immediately and to continue for the unexpired term of the contract upon the condition that said exclusive contract should and would be extended and continued at its expiration for a further term of years; that the amount of the rebate, and the increase of rebate was not regulated or determined by any law of supply and demand, but was determined solely by the necessity of making a price which would be sufficient to induce the consumer to give all his trade to the said defendant, and take him out of the open market for a long 69
period of time, at least until plaintiff had been coerced into submission or forced to retire from business; that said defendant was able to, and in some cases did, contract to supply said powder at less than the actual cost thereof, without any regard whatsoever to a fair and living profit or any profit thereon, which said defendant was enabled to do by reason of the fact that all losses which it might thereby sustain should and would be apportioned among and made up to it pro rata, by the other defendants and their co-conspirators aforesaid.

Twelfth. Plaintiff shows that in furtherance of the purpose of the defendants to monopolize and control the trade in powder and other explosives,

the defendant, E. I. du Pont de Nemours Powder Company, shortly after its incorporation created a Board known as the "Sales Board" composed of a Director of Sales and assistant directors, who exercised the power to fix prices and establish policies which all the other defendants and parties to the unlawful combination and conspiracy were compelled to observe; that no regular or fixed price-list was issued, but the prices which were established from time to time were purely arbitrary;
71 that in those States, Territories or foreign countries where the defendants and their co-conspirators were in full control of the powder trade, such prices were always fixed so as to leave substantial and sometimes excessive margins of profit, but that in those States, Territories and foreign countries where the defendants and their co-conspirators or some of them were conducting business in competition, or in danger of competition, such prices were regulated and determined solely with the object in view of preventing all manufacturers not
72 parties to the conspiracy from obtaining a fair proportion or any of the powder trade, and not with a view of obtaining business for itself at a fair margin of profit, so that the defendants and their co-conspirators might have a clair field to make any prices they should thereafter see fit, and without regard to the interest of consumers; and plaintiff further shows that for a period of more than five years it was continuously forced to meet the prices thus fixed by said defendant in an endeavor to obtain and retain enough business to keep its mills and plant operating and to obtain its fair share of the powder trade in said States, Territery and foreign country; but plaintiff was unable to offer to supply such powder at any price below which said defendant would not go, and wherever

and whenever the business of the consumer was submitted for bid, or to competition, in almost every case, the said defendant would underbid plaintiff by persistently reducing its price at from five to ten cents per keg, and thus not only depriving plaintiff of said business but sometimes making sales at an actual loss; that in this manner, plaintiff would ultimately be compelled to surrender the business of such consumer and leave the said defendant a clear field to make up its losses by fixing any price it might thereafter see fit; and by reason 74
of the matters and things alleged in this paragraph plaintiff suffered irreparable losses not only in the loss of the fair profits which would have come to it from each contract which it was thus prevented from securing, but from the extension of its business so as to keep its mills and plant continuously operating; and plaintiff further shows that the said defenadnt E. I. du Pont de Nemours Powder Company, in pursuance of the policy and practices in this paragraph set forth, did in most cases ultimately succeed in inducing the purchasers of black 75
blasting powder to enter into contracts with it for a period of years according to the tenor and effect hereinbefore in the last preceding paragraph set forth, and thereby gradually removed the danger of competition in the powder trade in said States, Territory and foreign country by absorbing more than ninety-five per cent, thereof.

Thirteenth. Plaintiff shows that on or about the 10th day of January, 1904, an explosion occurred at its said plant and mills whereby a large part thereof was totally destroyed, entailing a heavy direct loss upon plaintiff on account of the destruction of said property, and further serious losses on account of the enforced idleness of the remain-

der of said plant and mills during the time required for rebuilding; and plaintiff further shows that immediately after said explosion, the agents of said defendant caused to be printed and distributed among its own and plaintiff's customers large numbers of exaggerated reports of the extent of the damage done by said explosion, and endeavored to create a feeling of uncertainty among consumers generally and among plaintiff's customers in particular, concerning plaintiff's ability to meet their
77 future requirements for black blasting powder, with a view to inducing, and in some cases thereby succeeded in inducing, said consumers to enter into exclusive contract with said defendant to supply them with black blasting power, said contracts being of the tenor and effect hereinbefore in Paragraph Eleventh particularly set forth.

Fourteenth. Plaintiff shows that the defendant, E. I. du Pont de Nemours Powder Company, in order to forestall and prevent the construction of
78 powder mills throughout the United States and foreign countries, and to prevent competition, and with the purpose of securing to itself and its associates in said unlawful combination and conspiracy to monopolize the powder trade, further conspired, combined, confederated and agreed to and with various persons, corporations and associations engaged in the manufacture of powder-making machinery for the purpose of obtaining the exclusive use and control of powder-making machinery and thereby to limit the sale and use of such machinery to themselves and their associates; and by threatening to refuse to purchase powder-making machinery of any maker who would not give it and them such exclusive right, the said E. I. du Pont de Nemours Powder Company succeeded in intimi-

dating many powder machinery makers and thereby induced them to refuse to sell such machinery to any person, corporation or association not a party to the said combination and conspiracy; and plaintiff shows that at the time when plaintiff decided upon the construction of its plant as aforesaid, plaintiff sought to purchase the necessary machinery for use in said plant from various manufacturers of high-grade powder-making machinery, to wit: The Prox-Brinkman Manufacturing Company of Terre-Haute, Indiana, and Olin Scott of Bennington, Vermont, and I. & E. Greenwald Co. of Cincinnati, Ohio, and others; that at the behest of the said defendant, E. I. du Pont de Nemaurs Powder Company and in pursuance of said unlawful agreement, said manufacturers declined to supply such machinery to plaintiff upon the ground that the said defendants had insisted generally, and particularly in the case of plaintiff, upon a strict compliance with the terms of the said agreement, under penalty of the loss of future patronage of the said defendant and its associates in said combination and conspiracy; and thereby plaintiff was compelled to and did contract for the manufacture of said machinery especially for its purposes with other persons, and paid therefor a much higher price than the usual and customary cost of similar powder-making machinery, and largely in excess of the cost of similar powder-making machinery to the said defendant and its associates, and largely in excess of what plaintiff could have obtained said machinery for but for the threats, intimidation and unlawful conduct hereinbefore in this paragraph set forth, to the damage of plaintiff in the sum of Five Thousand Dollars ($5,000).

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Fifteenth. Plaintiff shows that being unable to

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withstand the great and continuing losses forced upon it by reason of the unlawful and wrongful acts of the defendants, as hereinbefore set forth, it was finally compelled to offer its mills, plant and business for sale; that the methods and conduct of the defendants and their said co-conspirators toward plaintiff had become generally known among powder manufacturers and dealers throughout the United States and foreign countries, as well as among the usual investors in property
83 owned and used for the manufacture and sale of powder, and it was generally known that the methods employed by the defendants and their said co-conspirators and particularly by the defendant, E. I. du Pont de Nemours Powder Company against plaintiff, were the methods that had long been similarly employed against other manufacturers and vendors of powder who had attempted to operate independently of the defendants, and their said co-conspirators, or some of them from time to time engaged in the conspiracy to monopolize the trade in explosives, and that generally independent ope-
84 rators had been unable to survive the combined assaults of said defendants, and their co-conspirators, and for this reason there was no market for such property except among the defendants and their said co-conspirators or some of them and among investors who had been accustomed to invest only in such properties as were operated or controlled by the defendants and their said co-conspirators or some of them; and plaintiff, not being able to find a purchaser, or in fact to obtain any bid or offer from any source, finally solicited the defendants and others of said co-conspirators to purchase its mills and plant at the fair value thereof and also to purchase its business, goodwill and stock on hand, for the fair and reasonable

value thereof, but all efforts to induce any of said defendants to consent to purchase said properties or any of said properties at the fair and reasonable value thereof totally failed, and plaintiff was then compelled, in order to keep said properties from going to waste and in order to avoid suffering a total and irretrievable loss of the entire value of said properties, to accept any offer that it might be able to obtain therefor, without any regard whatsoever to the true and fair value thereof; and thereafter, to wit: on or about the 19th day of September, 1908, plaintiff sold and disposed of its entire plant, mills, business and good-will for the total sum of Seventy thousand dollars ($70,000), and the stock on hand for Five thousand five hundred and four and 8/100 Dollars ($5,504.08) additional; and plaintiff further shows that the nominal purchaser of said property was one Franklin W. Olin of the City of Alton, State of Illinois; but plaintiff states that the said Olin purchased the same at the instance and request of the defendant E. I. du Pont de Nemours Powder Company and their said co-conspirators and by reason of a contract with the defendant E. I. du Pont de Nemours Powder Company and others associated with it at said time in said unlawful combination and conspiracy, whereby the said E. I. du Pont de Nemours Powder Company and said associates agreed to purchase ninety-five per cent. (95%) of the future entire output of said mills and plant for a long period of time; that immediately after the said properties were so purchased by said Olin, a corporation was organized for the purpose of taking over and operating the same, said corporation being designated the Western Powder Manufacturing Company and the said properties were thereupon transferred to said Western Powder Manufacturing Company,

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and it has ever since held the title to the same. And plaintiff further shows that the said Franklin W. Olin was at the time, the president of the Equitable Manufacturing Company, forty-nine per cent. (49%) of the stock of which said Company was then and is now held by the said defendant, E. I. du Pont de Nemours Powder Company, and which said Equitable Manufacturing Company had been theretofore for a long period associated with the said E. I. du Pont de Nemours Powder Company
89 in the said unlawful combination and conspiracy; that immediately after said purchase and transfer of said mills, plant and business to the said Western Powder Manufacturing Company, the same began operating to the full capacity thereof and have so continued down to the present time; that the entire output of said mills and plant was at once allotted and apportioned to the said E. I. du Pont de Nemours Powder Company and its associates under said contract and has ever since been and is being disposed of at the fair value thereof, and
90 the business of said Company at once became and ever since has been very profitable; that plaintiff further shows that at the time when it was so wrongfully compelled to sell and dispose of its plant, mills, business and good-will, as hereinbefore in this paragraph set forth, the true and fair value thereof was the sum of Five hundred thousand Dollars ($500,000), and plaintiff has suffered damage on account thereof in the sum of Four hundred thirty thousand Dollars ($430,000).

Sixteenth. Plaintiff shows that its mills and plants were equipped and designed to do a large and profitable business with users and dealers in explosives, and particularly black blasting powder; that when operating at full capacity, it employed

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a large force of men in the manufacture of such powder and was capable of producing one thousand (1,000) kegs daily; that the total annual capacity of said mills and plant, based upon three hundred (300) working days per year, was three hundred thousand (300,000) kegs of black blasting powder; that plaintiff began the manufacture of such powder on or about the 1st day of October, 1903, that during the year 1904, it manufactured and sold a total of One hundred eight thousand seven hundred and ninety-eight (108,798) kegs, and during the year 1905 a total of One hundred and fifty-eight 92
thousand one hundred and six (158,106) kegs, and during the year 1907 a total of eighty-six thousand three hundred and seventy-five (86,375) kegs, and from January 1st to August 31st, 1908, a total of thirty-two thousand and fifty-nine (32,059) kegs; that the inability of plaintiff to keep its plant and mills working at the full capacity thereof was due to and was the natural and proximate consequence of the wrongful and unlawful acts of the defendants, and their said co-conspirators as hereinbefore set forth; that every effort was made by plaintiff during all of said period not only to increase its 93
sales and keep its mills and plant operating to the full capacity thereof, but to maintain its customers and prevent the falling off of said sales, but by reason of the unfair, unlawful and wrongful conduct of the defendants, and their co-conspirators and particularly of the defendant E. I. du Pont de Nemours Powder Company, its agents, officers and employees, as hereinbefore alleged, plaintiff was prevented from obtaining a fair share of the trade in black blasting powder and other explosives in said states, territory and foreign countries, and was prevented from making a fair and reasonable profit on the powder manufactured and sold by it

94 as above set forth; and plaintiff shows that it was especially well equipped to secure a fair and reasonable portion of the said powder trade in fair and open competition; that said R. S. Waddell had full charge of the sales department of plaintiff and that he carried on a persistent and energetic campaign, during the entire period aforesaid, for a fair share of the powder trade in said states, territory and foreign country, and the business of plaintiff would have grown and increased from year to year instead of decreasing as above stated, but for the acts of
95 the defendants and their said co-conspirators and particularly the defendant, E. I. du Pont de Nemours Powder Company, as aforesaid; that the natural demand for black blasting powder within said states, territory and foreign country was sufficient to enable plaintiff to keep its mills and plant working to the full capacity thereof and its employees steadily employed; and plaintiff shows that its failure to keep its mills and plant working to the full capacity thereof and to prevent a falling off of its business from year to year instead of an
96 increase thereof, was the natural and proximate consequence of the said acts of said defendants; and plaintiff shows that by reason of said unlawful and wrongful acts, it sustained further losses as follows, to wit; the loss of the fair and reasonable profits of one hundred and ninety-one thousand two hundred and two (191,202) kegs of black blasting powder, which it was prevented from manufacturing and selling during the year 1904, and one hundred and forty-one thousand eight hundred and ninety-four (141,894) kegs during the year 1905, and two hundred and twenty-five thousand two hundred and fourteen (225,214) kegs during the year 1906, and two hundred and thirteen thousand six hundred and twenty-five (213,625) kegs during the

year 1907, and one hundred and sixty-five thousand four hundred and forty-one (165,441) kegs during the period extending from January 1st to August 31st, 1908, making a total of nine hundred and thirty-seven thousand three hundred and seventy-six (937,376) kegs, which it was thus prevented from manufacturing and selling previous to the time when it was forced by the defendants to dispose of its mills and plant and retire from business; that the fair and reasonable profits of said business which it was thus prevented from acquiring was the sum of thirty (30) cents per keg, after deducting all expenses connected with the manufacture, sale and transportation, or a total of two hundred and eighty-one thousand two hundred and twelve and 80/100 Dollars ($281,212.80); and plaintiff further shows that if it had not been driven out of business by the defendants as aforesaid, and if it had not been unjustly and unlawfully interfered with in its right to continue in business and make fair and reasonable profits from the manufacture and sale of black blasting powder to the full capacity of its mills and plant from the 19th day of September, 1908, to the present time, it would have manufactured and sold during the said period three hundred thousand (300,000) kegs per annum or a total of nine hundred thousand (900,000) kegs additional, upon which it would have made a profit of thirty (30) cents per keg, or a total of Two hundred and seventy thousand Dollars ($270,000) more; and plaintiff further shows that the fair profit on the powder which it actually manufactured and sold, as hereinbefore stated, and which it wholly lost by reason of the unjust and unlawful and wrongful acts of the defendants, as aforesaid, amounted to the sum of thirty (30) cents per keg on four hundred and sixty-seven thousand

one hundred and sixty-seven (467,167) kegs, or a total of One hundred and thirty-nine thousand one hundred and forty-nine and 10/100 Dollars ($139,149.10); making a total loss of profits resulting as the natural and proximate consequence of the acts of the defendants as hereinbefore in this paragraph set forth, in the sum of six hundred and ninety thousand three hundred and sixty-one and 90/100 Dollars ($690,361.90).

101 *Seventeenth.* That with the intent to impede, impair, injure and destroy the business of plaintiff, the defendants, and their said co-conspirators and particularly the defendant E. I. du Pont de Nemours Powder Company, maliciously, wantonly, wilfully, oppressively and wickedly, through their officers and agents, acting within the scope of their employment and by direction of and with the approval of the defendants and their said co-conspirators and particularly the defendant E. I. du Pont de Nemours Powder Company, committed the
102 wrongs herein set forth, whereby the business and property of plaintiff was injured and impaired and totally destroyed to its further damage, and by reason thereof plaintiff is entitled to recover punitive or vindictive damages against said defendant, and particularly against the defendant E. I. du Pont de Nemours Powder Company, in the sum of Five hundred thousand Dollars ($500,000).

WHEREFORE plaintiff prays that by reason of the matters and things hereinbefore set forth, it do have and recover judgment of and from the defendants herein and each of them, for three-fold the damages suffered by it, amounting to the sum of One million, one hundred nineteen thousand nine hundred and fifty-seven and 82/100 Dollars ($1,-

119,957.82), as actual damages, and the sum of Five hundred thousand Dollars ($500,000), as vindictive or punitive damages, or the total sum of Three million eight hundred and fifty-nine thousand eight hundred seventy-three and 46/100 Dollars ($3,859,873.46); and for a reasonable attorney's fee, and for its cost and disbursements herein, as authorized by law in such cases made and provided.

MacFarland, Taylor & Costello, 104
Attorneys for Plaintiff,
Office and Post Office Address,
No. 63 Wall Street,
Borough of Manhattan,
City of New York.

Twyman O. Abbott,
Walter J. Bartnett,
Of Counsel.

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106 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against	Action Under Section 7 of Act of Congress of July 2, 1890.
107 E. I. DU PONT DE NEMOURS POWDER COMPANY (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), Defendants.	Pleas.

108 And the said E. I. du Pont de Nemours Powder Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, comes and defends the wrong and injury when &c., and says that it is not guilty of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says, that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes

of action in the said declaration, did not, nor did any or either of them accrue, at any time within six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, E. I. du Pont de Nemours Powder Company. 110

STATE OF DELAWARE }
COUNTY OF NEWCASTLE. } ss.:

ALEXIS I. DU PONT, being duly sworn according to law, on his oath says that he is the Secretary of the E. I. du Pont de Nemours Powder Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a 111
just and legal defense to the action on the merits of the case.

ALEXIS I. DU PONT.

Sworn and subscribed before me a Notary Public in and for the County of Newcastle and State of Delaware, the 28th day of June, A. D. 1912.

PERCY E. STRICKLAND,
Notary Public, Delaware.

[Official Seal.]

My commission expires May 24, 1914.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

112 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against 113 EASTERN DYNAMITE COMPANY (a corporation of New Jersey), International Smokeless Powder and Chemical Company (a corporation of New Jersey), Defendants.	Action Under Section 7 of Act of Congress of July 2, 1890. Pleas.

And the said Eastern Dynamite Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, comes and defends the wrong and injury when &c., any says that it is not guilty 114 of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it, &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says, that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes of action in the said declaration, did not, nor did any or either of them accrue, at any time within

six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, Eastern
Dynamite Company. 116

STATE OF DELAWARE,
COUNTY OF NEWCASTLE, } ss.:

CHARLES COPELAND, being duly sworn according to law, on his oath says that he is the Treasurer of the Eastern Dynamite Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a just and legal defense to the action on the merits of the case. 117

CHARLES COPELAND.

Sworn and subscribed before me,
a Notary Public in and for the
County of Newcastle and State
of Delaware, the 28th day of
June, A. D. 1912.

J. ED. WILSON,
Notary Public,
Newcastle County,
State of Delaware.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

118 **Pleas.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a corporation, Plaintiff, against 119 INTERNATIONAL SMOKELESS POWDER & CHEMICAL COMPANY (a corporation of New Jersey), Eastern Dynamite Company (a corporation of New Jersey). Defendants.	Action Under Section 7 of Act of Congress of July 2, 1890. Pleas.

And the said International Smokeless Powder and Chemical Company, one of the defendants in this suit, by Frank S. Katzenbach, Jr., its attorney, 120 comes and defends the wrong and injury when, &c., and says that it is not guilty of the said supposed grievances above laid to its charge, in manner and form, as the said plaintiff hath above thereof complained against it, &c., and of this it, the said defendant, puts itself upon the country.

And for a further plea in this behalf, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of statute in such case made and provided, says that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, because it says that the said several supposed causes of action in the said declaration, did not, nor did any or either of them accrue, at any time within

six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against it, the said defendant. And this it, the said defendant, is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, &c.

FRANK S. KATZENBACH,
Attorney of defendant, International
Smokeless Powder & Chemical Company. 122

STATE OF DELAWARE, }
COUNTY OF NEWCASTLE. } ss.:

W. E. STEEN, being duly sworn according to law, on his oath says that he is the Treasurer of the International Smokeless Powder and Chemical Company, the above named defendant, and for this purpose its duly authorized agent; that the pleas above about to be filed are not intended for the purpose of delay, but because it is verily believed that there is a just and legal defense to the action 123 on the merits of the case.

W. E. STEEN.

Sworn and subscribed before me a Notary Public in and for the County of Newcastle and State of Delaware, the 28th day of June, A. D. 1912.

PERCY E. STRICKLAND,
Notary Public, Delaware.
[Official Seal.]
My commission expires May 24, 1914.

Endorsed: Filed June 29, 1912.

GEORGE T. CRANMER,
Clerk.

124 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

THE BUCKEYE POWDER COMPANY, a Corporation,
Plaintiff,
against
E. I. DU PONT DE NEMOURS POWDER COMPANY (a Corporation of New Jersey), EASTERN DYNAMITE COMPANY (a Corporation of New Jersey), INTERNATIONAL SMOKELESS POWDER AND CHEMICAL COMPANY (a Corporation of New Jersey),
125 Defendant.

Bill of Exceptions.

BE IT REMEMBERED that afterward, to wit, on the 23d day of September, 1913, at a stated term
126 of the United States District Court for the District of New Jersey, begun and holden at the City of Trenton in said district, before the Hon. John Rellstab, a Judge of said district, the issues joined in the above cause of action, as set forth in the Amended Declaration and the Answers thereto, came on to be tried before a jury and continued, with sundry adjournments, until the 25th day of February, 1914; that the plaintiff was represented by its attorneys, MacFarland, Taylor and Costello, Willard U. Taylor, Twyman O. Abbott, Walter J. Bartnett, Linton Satterthwaite, and Alfred H. Strickland; and the defendants by their attorneys, Frank S. Katzenbach, Jr., Robert H. McCarter, J. P. Laffey, William H. Button and George S. Graham; that a jury was impanelled and

sworn; that upon the trial of said issues the parties by their respective attorneys, to maintain and prove the issues, eacn on its part to be proved, introduced and offered in evidence the testimony of certain witnesses, and introduced and offered in evidence certain documents and records; and certain objections were made to said offers, and said objections were sustained or overruled, and said offers were received or refused, all as hereinafter particularly set forth; that the names of the witnesses whose testimony was so offered and received in evidence, 128
together with the testimony so offered and received, and the objections made thereto, and the orders of said Court sustaining or refusing said offers, together with plaintiff's exceptions taken at the time thereto, and together with the documents and records which were offered in evidence as exhibits and which were received or refused by said Court, in so far as the same is necessary to determine the issues upon Writ of Error on behalf of the plaintiff herein, are particularly hereinafter set forth as follows, to wit:

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Jury called as follows: Richard Satterthwaite, W. Howard Shreve, James B. Bell, William B. Wean, Peter A. Sturgeon, Edgar T. Beers, Thomas T. Woodhouse, Lloyd H. Rockhill, George W. Prall, August Jenter, John F. Dickson, John S. Neary. Jury sworn.

Twyman O. Abbott, Esq., opened for plaintiff.

PIERRE S. DU PONT, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. du Pont, where do you reside? A. In Wilmington, Delaware.

Q. What is your business? A. I am treasurer of the E. I. du Pont de Nemours Powder Company.

Q. How long have you been treasurer of the corporation whose name you mention? A. Since the corporation was organized in 1903.

Q. In 1903? A. Yes.

Q. Do you hold any other official position in that company? A. I am now acting president of the company; also a director.

Q. How long have you been a director of the com-
131 pany? A. Since the organization of the company in 1903.

Q. Previous to your becoming president, or becoming connected with the E. I. du Pont de Nemours Powder Company, what was your occupation? A. I had been with the E. I. du Pont de Nemours and Company in the manufacturing department for nine years, from 1890 to 1899; from 1899 to 1902 I was engaged in business in Lorraine, Ohio, nothing to do with explosive business. In 1902 I gave up my position with that company and took the position of treasurer of the E. I. du
132 Pont Company, the new company.

Q. Previous to the organization of the E. I. du Pont de Nemours Powder Company, what were the du Pont interests known as technically? A. E. I. du Pont de Nemours & Company.

Q. And was it a corporation? A. The former E. I. du Pont de Nemours Company was a partnership from the year 1802 to 1899, it was several partnerships succeeding each other.

Q. Are you acquainted with the du Pont Company from its formation down to the present day? A. In a general way, yes.

Q. Will you kindly state in a general way when the du Pont interests began business, and how long they have been continued in that business? A. The

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business was started in the year 1802 and manufacturing started about 1804. At that time so far as I know, the du Ponts were the only manufacturers of explosives in the United States; and from then on for some time, I think about 1850 other companies appeared in the field.

Q. What other companies were there? A. I think the Hazard Powder Company was started about 1850; and the Laflin & Rand Powder Company started before that; I think they had a mill started about 1820.

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Q. Were there any other? A. I have none others in mind; I don't know if there were or were not.

Q. Now, proceed with the narration of events. A. The du Pont Company was, I believe, the largest interest in the explosive industry at that time. In 1876 the du Pont Company purchased all of the stock of the Hazard Powder Company and from then on was decidedly the largest manufacturer of explosives in the United States.

Q. You say the du Pont Company? A. That is the partnership.

Q. The partnership? A. Yes.

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Q. How long did that continue as a partnership? A. Until the year 1899. There were, of course, partnerships succeeding each other, but the partnership was maintained from 1802 to 1899.

Q. Do you know who were the members of that partnership? A. The last partnership?

Q. The last partnership? A. Mr. Eugene du Pont, Col. H. A. du Pont, F. G. du Pont, Alexis I. du Pont, and I think Charles I. du Pont, and Alfred I. du Pont.

Q. Did you yourself have any interest in that partnership? A. No; none whatever.

Q. When did you state that the partnership became incorporated? A. The year 1899.

Q. Did you have any interest in that incorporation? A. None whatever.

Q. Who were the members—who did have interest in that corporation, if you know? A. Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont, F. G. du Pont, Alfred I. du Pont, and Charles I. du Pont.

Q The next step in the organization, or in the carrying on of the business of the du Pont companies after the organization of the company was
137 what? A. The corporation of 1899 was in operation for three years until 1902, when Mr. Eugene du Pont, who was president of the company and the active manager—in fact, the only manager died, the end coming very suddenly. The company was thus left without a managing head. None of the stockholders had been interested in the management, or knew much of it; and three of them out of the six were at the time in ill health; and they determined that the business must be sold, that they were not in a position to operate it any longer.

138 Q. What was the amount of capital stock of the corporation which was formed to take over the du Pont partnership, if you know? A. It organized with apparently, with a nominal capitalization, which had nothing to do with the assets—two million dollars.

Q. Two million dollars formed the capitalization? A. Yes, sir.

Q. That did not amount to the actual value of the assets? A. Oh, no; that was purely a nominal figure.

Q. Do you know in what proportion that stock was divided between the stockholders at that time? A. Yes; Mr. Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont and Francis G. du Pont each had 20 per cent; Alfred I. du Pont and Charles I. du Pont each 10 per cent.

Q. It was about this time you stated that you became interested in the du Pont Powder business? A. In the year 1902.

Q. In the year 1902? A. Yes.

Q. Will you describe how you came to take an interest in that business at Wilmington? A. The first intimation I had that the business was to be sold came to me through a telephone message to Lorraine, Ohio, where I was then a resident, from T. C. du Pont. Mr. T. C. du Pont called me and told me that Mr. Alfred du Pont and he had decided 140 to make an effort to purchase this business; that the former owners had decided to sell, and that he, T. C. du Pont, had agreed to help purchase, if I would join in the enterprise, as T. C. du Pont, Alfred I. du Pont and myself.

Q. What response did you make to that intimation? A. I told him I was willing to do it, although I knew nothing of the details at the time.

Q. What steps, if any, did you take to inform yourself? (Objection sustained.)

Q. Did you inform yourself, Mr. du Pont, as to the assets of the interests which you were proposing 141 to take over? A. I did; yes.

Q. Did you inform yourself? A. I did; yes.

Q. You decided to take over these assets, did you? A. Yes.

Q. What did you ascertain the valuation of the properties to be at that time? (Objection overruled.) A. I can best answer that by saying that I, as director of the corporation that was organized to take over the property, voted to purchase for $24,000,000—that was the valuation at which the property was put.

Q. Did you make any previous investigation of the question of valuation before you took the vote that you have just now mentioned? A. Yes.

Q. Now, what was that valuation that you ascertained the property to be from the investigation which you say you made? (Objection overruled.) A. That valuation, as I said, was $24,000,000, which was the purchase price of the property.

Q. I am asking you now about the previous valuation which you put upon the property? A. That was the only valuation that there was. I examined the books and from that we determined to purchase the property for the amount named, $24,000,000.

143 Q. You stated a while ago that you had no knowledge of the extent of the business at the time when the proposition was made to you to become interested in the business? A. None whatever.

Q. I will ask you to state whether or not on or about the 20th day of February, 1902, you wrote a letter to Irenee du Pont, 788 Broad Street, Newark, N. J. A. I cannot remember having written it; it is quite possible.

Q. Well, I show you a book which is marked Plaintiff's Identification 12, being a part of the

144 record of the United States of America, petitioner, vs. E. I. du Pont de Nemours & Company, defendants, and refer you to page 38 of Vol. 1 of the exhibits (Government exhibits), and ask you to look at the matter which appears there and state whether or not you can recall whether that is a true, correct copy of a letter which you wrote at the time mentioned? A. Yes; I believe it to be correct.

(Letter referred to offered and received in evidence as Plaintiff's Exhibit 19 and read to the jury as follows):

February 20th, 1902.

Irenee du Pont, Esq.,
788 Broad Street, Newark, N. J.

Dear Irenee:—

Just after Cousin Eugene's death the stockholders of E. I. du Pont Co. had a meeting and decided to sell out the business to Laflin & Rand as no one was ready to 146
take up the management. Alfred made a request that he be permitted to take the property which request was granted. He came to Coleman and me and we decided to make an offer to the old stockholders to buy them out. This has been done and the proposition I am informed by Eugene this afternoon has been accepted. It is now only necessary to reduce it to writing. This will doubtless come as a great surprise to you; nevertheless, it seems to be a 'go.' I think
that there is going to be some tall hustling 147
to get everything re-organized. We have not the slightest idea of what we are buying, but in that we are probably not at a disadvantage as I think the old company has a very slim idea of the property they possess.

"I mentioned this matter to Fenn the last time I was in New York and have just written him asking whether you and he would be prepared to take on any additional work in Dallas, as it will be necesary for me to shift part of this burden on some one else. I have written to Bill asking him whether he will take it up in the way I have, supposing you will act with him as you have with me. You may talk with Irenee about this, but

do not mention it outside until I advise you as the du Ponts are cranky and may not like to have the news announced before they do it themselves.

Your affectionate brother,

PSduP/JJR (signed) Pierre S. duPont.

149 Q. Now, Mr. duPont, did you write another letter—I show you the same volume which I showed you a moment ago and ask you to refer to pages 39 and 40 of that volume, and look at what appears to be Defendant's Exhibit No. 5 and examine the same and state whether you recall having written the same? A. Yes; I recall the letter.

(Letter offered and received in evidence as Plaintiff's Exhibit 20, and read to the jury as follows):

February 20th, 1902.

150 William K. duPont, Esq.,
Johnstown, Penna.

Dear Bill:

The wheel of fortune has been revolving at a pretty high speed on the Brandywine during the last week or two with the result that Coleman, Alfred and I have made E. I. duPont & Co. an offer to buy out their property, and I have to-day received verbal acceptance of the proposition The matter came about through the determination of the old stockholders to sell the property, as no one was willing to handle the management. After decision to sell was made Alfred re-

quested that he might be allowed to purchase. He then came to Coleman and me and we decided to go in together. The proposition to the old stockholders is to offer bonds in payment of the property giving a stock bonus. Eugene, who has come up to stay at our house until his folks return, told me last evening that they had had a meeting at which Cousin Henry, Frank, Charles and Eugene were present, and decided to accept the proposition. Cousin Alex was not well 152
and did not come to the office, but Eugene assures me that he will accept also. I suppose we will go over to-day to make arrangements for transferring the property. You will doubtless be surprised at this turn of affairs. I realize that we are taking up a pretty big load; the prospects, however, I think, are bright for making it a success.

"I have made arrangements concerning The Johnson Co. to turn over a good deal of my work to Mr. Donaldson, though I cannot cut loose from there all together. Mr. 153
Johnson knows of the circumstances, and thinks it is all right for me to act as I have.

"As to Dallas, I am somewhat uncertain. Would like to turn part of the care of the property over to you if you can arrange it. I have talked with Coleman and believe he would advise you to make some arrangements concerning the Ice Company and take up the other work in addition if possible. Will you please think over the proposition: 1st, as to whether you can get some time away from Johnstown, and 2d, whether you care to undertake the Dallas work. I think that the financial part of it can be arranged

satisfactorily. Of course, it will not be necessary for you to go South oftener than I have done. You may tell Ethel all about this, but please do not mention it to any one else until I advise you to do so. The deal is not absolutely perfected yet and had better not be talked around until it is a sure go. I told mother before she left for Arizona and asked her to tell Belin. Lou also knows. Coleman has told Aunt Poll and Alfred has
155 talked to Bessie. I do not know whether any one else knows of it or not.

Your affectionate brother,

PSduP/JJR.

Q. At the time that you wrote those letters, as I understand it, you had made no investigation of the value of the properties which you were proposing to buy? A. My investigation was made between the first of February and the time the property was finally transferred, which I think was in April
156 or May. I believe my investigation was made during the months of April and March.

Q. Was anything said by the persons who were proposing to turn this property over to you as to the value of the property? (Objection overruled.) A. Yes; I understand that the former owners were willing to sell it for twelve millions in cash.

Q. Now, how were the interests, which you were proposing to take over at that time constituted, what were they made up of? A. They were made up of cash and cash assets used in the manufacture and sale of explosives, the factories and magazines, also for the sale and manufacture of explosives and stocks of other corporations, principally those manufacturing explosives.

Q. What plants did the duPont interests have in

actual operation at that time? A. They had plants which they owned directly, one at Wilmington, Delaware, for the manufacture of black blasting powder, one at Wap-Walloken, Pennsylvania, for like manufacture, one at Ulooar, Iowa, for the same manufacture and a factory at Carney's Point, N. J., for the manufacture of smokeless powder.

Q. What was, according to the best knowledge, the valuation of those plants that were you were then proposing to take over? (Objection overruled.) A. I couldn't make any estimate of that; 158
I do not remember any separate figures.

Q. Well, then, would you state at this time what the other assets were of the duPont Company that you were then proposing to purchase outside of these plants which you have named? A. They had cash, accounts receivable——

Q. How much cash? (Objection overruled.) A. My recollection is about a million or a million and a half dollars; I should think a million and a half dollars, and accounts receivable, materials and supplies.

Q. How much were the accounts receivable? 159
(Objection overruled.) A. I couldn't make any estimate of that.

Q. How much supplies? (Objection overruled.) A. I couldn't estimate that either.

Q. What were the other assets? A. There were stocks in corporations for manufacturing explosives and also investments in what might be termed standard securities.

Q. What kind of securities? A. Standard securities; Stock Exchange securities, if you please.

Q. How much in standard securities? (Objection overruled.) A. I cannot remember that; I should think about $3,000,000.

Q. What else? A. And they had tracts of real

estate throughout the country; some had been used for magazine purposes, some had been abandoned for that use.

Q. How much did you place to that account? A. I have no recollection of that.

Q. Well, now, what else did you have? A. Stocks in manufactories of supplies.

Q. Now, that was the point I wanted to reach; what stocks did it hold in other manufacturing concerns? A. You mean the companies in which they
161 were interested?

Q. Yes. A. I can name some of them, I think.

Q. Have you any data on hand upon which you can give an accurate statement? A. No; I have not.

Q. I refer you to page 485 of the defendant's record, testimony, Vol. 1, in the case to which I called your attention a moment ago, and ask you to look at what appears on that page and state whether you are able to give a definite resume of the stocks owned and the various corporations in which the same were owned at the time when you were pro-
162 posing to take over the duPont interests. A. (after examination) I judge that is a correct list; yes.

Q. Well, now, will you kindly read into the record a full list of the stocks and corporations owned by the duPont Company at the time when you took over those interests? A. "Austin Powder Company, 266 shares, 32 per cent of the total capital; Birmingham Powder Company, 203 shares, 32.5 per cent; California Powder Works, 6500 shares, or 20 per cent; Chattanooga Powder Company, 731 shares, 29 per cent; Consumers Powder Company, 530 shares, 25 per cent; Eastern Dynamite Company, 1908 shares, 9.5 per cent; The Enterprise Powder Manufacturing Company, 438 shares, 35 per cent; Equitable Powder Company, 298 shares, 29.8 per cent; Fairmount Powder Company, 446 shares, 59.4

per cent; the Indiana Powder Company, 411 shares, 20.5 per cent; Laflin Powder Company, 2091 shares, 34.8 per cent; Lake Superior Powder Company, 908 shares, or 22.7 per cent; Mahoning Powder Company, 500 shares, or 50 per cent; The Northwestern Powder Company, 136 shares, or 22.6 per cent; Ohio Powder Company, 230 shares, or 15.3 per cent; Oriental Powder Mills, 1235 shares, 31.3 per cent; Phoenix Powder Manufacturing Company, 2314 shares, 28.9 per cent."

Q. At this time did that company have any interest in what was known as the Hazard Powder Company? A. Yes. 164

Q. What interest did it have belonging to the company under the name of the Hazard Company? A. It owned all of the stock of the Hazard Powder Company and had owned it since 1876 or thereabouts.

Q. Do you know what the assets were of the Hazard Powder Company were at that time? (Objection overruled.) A. Yes; it had a factory for the manufacture of black blasting powder at Hazardville, Connecticut, and the necessary cash assets to operate that factory and sell this powder and also numerous stocks in other corporations manufacturing explosives. 165

Q. Do you know at this time what stocks it held in other corporations? A. I could name some of them; I have no list at hand.

Q. I show you the same volume that you just read from a moment ago, page 486, and ask you to look at it and state whether you can give a detailed statement of the stocks held by the Hazard Powder Company at that time? A. (after examination) That is a correct list; yes.

Q. Well, now, will you kindly read into the record the statement that you see there that you think

is correct? A. The Eastern Dynamite Company, 5164 shares, 25.8 per cent; The Hecla Powder Company, 52 shares, 5.2 per cent; the Lake Superior Powder Company, 609 shares, 15.2 per cent; the Ohio Powder Company, 116 shares, 7.7 per cent; the Oriental Powder Company, 1222 shares, 30.5 per cent; The Phoenix Powder Manufacturing Company, 1104, 13.8 per cent.

167 Q. Do you know what the total amount of the black powder business was which was done by your company and the Hazard Powder Company at the time that you are about to take over the DuPont interests? A. No, I do not remember that.

Q. Did you have any interests outside of the Hazard Powder Company in what is known as the Laflin-Rand Powder Co.? A. No, sir; no interests whatever.

Q. Were you in any way interested with the Laflin and Rand Powder Company, in the ownership of any properties or any interests which were engaged in the manufacture of powder at that time?

168 A. Yes.

Q. In what way? A. They were owners of stock in most of the corporations in which E. I. DuPont de Nemours & Company were interested.

Q. Have you any means at hand of giving a definite statement as to the amount of stock owned by the Laflin & Rand Powder Company at that time? A. No, I have not.

Q. Now, will you state how the E. I. DuPont de Nemours & Co., and the Laflin & Rand Powder Company were united in carrying on the black powder business of the country? A. I don't understand the question.

Q. Was there any union in any way, any kind of an arrangement whereby you were to conduct the black blasting powder trade, which your interests

and the Laflin & Rand interests conducted? (Question withdrawn.)

Q. You have just testified that you had large interests in the Hazard Powder Company; when did you first acquire those interests, when did the DuPont interests first acquire those interests? A. 1876; that is, the stock of the Hazard Powder Company was purchased about 1876, all of the stock.

Q. That was by the duPont interests known as the partnership? A. Yes.

Q. Did the duPont interests continue to hold the 170
interests in the Hazard Powder Company, down to the time when you entered into negotiations to purchase them? A. Yes.

Q. Can you state at this time what per cent. of the black blasting powder trade of the country was controlled by the Laflin & Rand Powder Company?

The Court: When?

Q. When you were negotiating for the purchase of the du Pont interests? A. No, I cannot state that. 171

Q. I refer you to page 467 of the same volume which you examined a moment ago and ask you to examine that page and state whether or not you can refresh your memory upon that point? A. No, I cannot answer your question from this. This does not relate to the powder trade of the country.

Q. Well, will you state what it does relate to, upon that point? A. This relates to the black powder business done by the E. I. du Pont de Nemours Powder Company and Laflin & Rand Powder Company and the corporations which they together con trolled and owned of the stock.

Q. What was that interest? A. The Laflin Rand Company had twenty per cent. of the business of the two companies and the jointly controlled companies.

Q. And what part of the E. I. du Pont Company, what part did they have? A. Thirty-six per cent.

Q. And together they controlled 44 per cent. is that correct? A. No, the corporations in which they had a controlling interest together had a controlling interest together add up to 44 per cent. those figures add up to 100 per cent. but that is not of the total trade of the company, bu that is of he trade enumerated in the paragraph.

Q. State definitely just what that percentage
173 that you have given here does relate to? A. Those percentages are the percentages of the total trade controlled—I mean supplied by Laflin and Rand, E. I. du Pont d Nemours & Company and by the corporations which they together controlled the majority of the stock. That covered nothing in which they held a minority interest and in which they h.d no interest. It does not relate to the trade of the country.

Q. Now after you formed the—after you decided to purchase the du Pont interests as represented by the du Pont Company, which you proposed to
174 buy over, how did you go about it to purchase those interests? A. Which interests do you mean?

Q. The du Pont interests. In other words what did you decide to pay for them? A. We organized a corporation which was known as the E. I. du Pont de Numours Company and that name was afterward changed to E. I. du Pont de Nemours & Company, that corporation and all those assets formerly owned by the E. I. du Pont de Nemours Company of 1899 were bought for twenty-four millions of dollars.

Q. How did it pay the twenty-four millions? A. Twelve millions on four per cent. notes and twelve millions in stock.

Q. What was done with the balance of the stock

of the E. I. du Pont de Nemours & Company? Objected to.

The Court (To the witness after argument): Was any more stock issued?

The Witness: There is no more stock issued than that I have named, twelve million in notes and twelve millions of stock. The total authorized issue of the stock was twenty million shares, the balance of it was in the company. 176

Q. Was the balance of it assigned or given to anybody? A. No.

Q. What was ever done with the balance of the stock? Did it still remain unissued? A. Still remained unissued in the company.

Q. In the possession of the company which took over the final interest of E. I. du Pont de Nemours Company? A. Yes; I think I am clear on your question. The corporation, E. I. du Pont de Nemours Company, organized by us to take over the assets of E. I. du Pont de Nemours & Company 177 issued twelve million dollars of notes and twelve million dollars of stock to purchase the assets of the seller and no further issue of stock was made.

Q. Can you state—A. May I correct that statement? There was stock sold afterwards for cash I think to about thirteen million dollars total.

Q. Have you a list of the stockholders of the company accessible? A. Of the E. I. du Pont de Nemours Company, organized in 1902

Q. The one which you organized to take over the assets of the partnership? A. I have not a list accessible, I could name them, I think.

Q. You can name them? A. As they were at that time, I think so; yes.

Q. Will you kindly do so? A. The estate of Eugene du Pont, Col. H. A. du Pont, Alexis I. du Pont, Charles I. du Pont, F. G. du Pont, Alfred I. du Pont, T. C. du Pont, and P. S. du Pont.

Q. How much of that stock was held by T. C. du Pont? A. I cannot state that exactly.

By the Court (to the witness after objection and argument):

179 Q. I understand you to say no more stock was issued, Mr. du Pont, than that which was necessary to take over the du Pont interests? A. That I think is correct. There was twelve million of stock issued in payment of this property, in part payment, the balance made up by notes and further stock issued, I think, up to thirteen millions.

Mr. Graham: For cash?

The Witness: One million dollars of the stock was issued for cash later on. I think the stock of the company when finally dis-
180 solved that had to be taken up was $13,300,000 or thereabouts.

Q. Upon the organization of the company, the new company had to take that stock? A. Yes, they did.

Q. That would be included in the twelve million dollars, would it? A. Yes, part of that twelve million went to the organizers of the company.

The Court: Proceed.

By Mr. Abbott:

Q. Who were the officers of the company which you organized to take over the interests of the

du Pont company at the time? A. I am not quite clear as to this. Mr. T. C. du Pont was President of it; Mr. Alfred I. du Pont, Vice President; I was treasurer; and Mr. Alexis I. du Pont, Secretary.

Q. Now, who were the directors? A. I am not quite clear, but I think I can name them. There was Col. H. A. duPont; Alexis I. duPont, Sr.; F. G. duPont; T. C. duPont; Alfred I. duPont; P. S. duPont, and I think Alexis I. duPont, second.

Q. Have you any means at this time, Mr. duPont, of stating exactly how many shares of stock you held in that company at that time? 182

Mr. McCarter: That we object to as utterly immaterial.

Mr. Abbott: I am trying, if Your Honor please, to reach the point, in every way that I can, from this witness, of what was done with that 80 per cent. of stock which he says was practically unissued, that is to say——

The Court: He said that was unissued, unissued except for one million.

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A. (Interrupting) About one million which was afterwards issued.

Mr. Abbott: I want to know what was done with that stock?

The Court: If it was not issued, it is not issued.

Q. Do you remember what interests were owned by the Laflin and Rand Powder Company, what corporations were owned by them at the time when you took over the interests of the duPont Company? A. I could name some of them, but not the exact amount.

Q. You know the corporations that they were interested in? A. I think so; yes.

Q. Will you kindly do so, stating the amount of shares of stock that they held in any corporation and also the percentage that it would be? A. I could not state that now.

Q. Then, I will refer you to Page 495 of the same volume which I handed you a moment ago, and ask you to look at it and state whether or not you can refresh your memory (handing book to
185 witness)? A. I am afraid I have not the right place here.

Q. At the bottom of the page, Mr. duPont. A. This does not seem to be a list of the Laflin & Rand holdings.

Q. What does it refer to? A. That refers to the corporation in which they were the largest stockholders and majority stockholders.

Q. Let me look at that a moment and see. (Takes book.) Well, do you know who was the owner of what was known as the Birmingham Powder Company at the time you took over the interests of
186 the duPont Company? A. The duPont Company and the Hazard Powder Company which had shares in it, but I cannot name the other stockholders.

Q. What shares did the duPont Company have in that company? A. I would have to refer to the list that was just read for that.

Q. What shares did the Laflin & Rand Powder Company have in that? A. I could not state that; they were stockholders, though.

Q. Now, after you formed and took over the interests of the duPont Company, what was the next step that you took in reference to the conduct of the business of that company? Did you continue to do business under the name of E. I. duPont de

Nemours & Company as changed? A. No, we continued to do business under the name of E. I. duPont de Nemours Company, which was the name of the corporation organized, the new company. There was a slight difference in the names of the organizations from the E. I. duPont de Nemours & Company to the new corporation of E. I. duPont de Nemours and Company which we formed.

Q. So that the name of the corporation was then E. I. du Pont de Nemours and Company? A. It was, and the old corporation was dissolved immediately on the formation of this one and on the dissolution of the company we changed the name of our company to E. I. du Pont de Nemours & Company. 188

Q. Was the stock of the company isued? A. Yes; that is the company which we have been speaking of.

Q. Was there any change in the amount of stock that was held by the various stockholders of the company after its name was changed? A. No; nothing that I know of.

Q. How long did you conduct the business under the name of E. I. du Pont de Nemours Company? A. E. I. de Pont de Nemours Company? 189

Q. Yes, E. I. du Pont de Nemours Company. A. I think for a very short time; I think the name of that company was changed within a very few months.

Q. How long did you conduct the business under the name of E. I. du Pont de Nemours & Company?

Until about August, 1903.

Q. Then what did you do with reference to E. I. du Pont de Nemours & Company? A. The corporation was organized under the name of E. I. du Pont de Nemours Powder Company, which is the present corporation, and on August 1st, 1903, E. I. du Pont de Nemours & Company sold all of its property to

Q. All of the property it had acquired from the du Pont Company? A. Yes.

Q. As well as all of the property that it had subsequently acquired? A. Yes, sir.

Q. What property had it acquired between the time that it came into existence and the time it went out of existence? A. I can not remember anything of note excepting the stock of the Delaware Securities Company, and the stock of the California Investment Company—no, I think they did not acquire
191 that, I think that they acquired the Delaware Securities Company and that was the only stock.

Q. What was the Delaware Securities Company? A. That was a corporation that was organized to purchase the shares of the Laflin & Rand Powder Company.

Q. How much of the stock of the Delaware Securities Company did the E. I. du Pont de Nemours Powder Company acquire? A. They eventually acquired all of it but about 15 shares, I think.

Q. Previous to that time had the Delaware Securi-
192 ties Company acquired all of the interest of the Laflin & Rand Powder Company? A. I am not certain about that; I think they did, I think they acquired all of the shares of the Laflin & Rand Powder Company.

Q. So when the E. I. du Pont de Nemours & Company—so far as they were concerned, they acquired the Laflin & Rand Company? A. Yes, sir.

Q. At that time it had the Laflin & Rand interest, and the Hazard interest which you had acquired previously, and the interest known as the E. I. du Pont interest, is that correct? A. That is correct.

Q. And so E. I. du Pont de Nemours Powder Company composed within itself all of the assets that had previously been held by the du Pont interests and by the Hazard company interests and the

Laflin & Rand Company interests, is that correct? A. Yes; the Hazard interests had been already owned by the du Pont interests.

Q. Now, after all these interests were acquired by the Powder Company (I will use that term for a short name), what other interests were acquired by that company? A. The E. I. du Pont de Nemours Powder Company made an offer to purchase the shares of all the corporations in which the du Pont interests had been interested, on the same basis as had been offered the du Pont interests, the same 194
price per share to each stockholder.

Q. Was that offer accepted? A. To a very large extent, yes.

Q. Did the Powder Company finally succeed in acquiring all of the interests held by the du Pont interests—du Pont heirs? A. They had already acquired that in their first purchase, the first purchase made by the Powder Company when it took the property known as the du Pont interests they acquired that entire, at one purchase.

Q. Was there at this time, or were there at that 195
time—during the year 1908 or up to the time of 1908, were there at that time outstanding any interests formerly known as "du Pont interests" which were not held by the Powder Company? A. No.

Q. Now, have you a list of the stocks owned by the Powder Company in 1909? A. No, I have not.

Q. I show you Government's Exhibit 402 on page 2757 of Volume 5 of Petitioner's Records in the case of United States of America, Petitioner, against E. I. du Pont de Nemours & Company, which has been marked as Plaintiff's Exhibit 8, and ask you to look at that document and state whether or not it refreshes your memory so that you can answer the question which I previously propounded to you-(Handing book to witness). A. I judge that is correct. (Objection sustained.)

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Q. I was asking you as to 1908, is that correct? A. 1909.

Q. Was any portion of the stock of the E. I. du Pont de Nemours Company ever reconveyed, or retransferred to any other party to your knowledge than those who were the original holders of the stock? (Objection sustained.)

Q. I will ask you to state whether or not you and Mr. T. C. du Pont and Mr. A. I. du Pont did not receive directly or indirectly, share and share alike,
197 75 per cent. divided between you of the stock of the E. I. du Pont de Nemours & Company, which succeeded to the interests of the du Pont Company. (Objection sustained.)

By the Court:

Q. We understand that only 20 per cent of the stock of this company that was organized to take over the du Pont interests was issued? A. That is not quite right, your Honor. I said twelve millions
198 out of twenty millions issued.

Q. The 80 per cent was not issued? A. The balance of eight millions, the difference between eight millions and twelve millions.

Mr. Graham: Counsel said 80 per cent of this stock.

Q. Counsel's interrogations were always based on 80 per cent. That, of course, by mathematics, would leave 20 per cent issued. (To the witness): Do you understand that that was so? A. No; I understood the question——

Q. About the eight millions? A. How much was issued in payment for the property?

Q. No; that was not his question. A. May I have

the question again? (After argument question repeated.)

Q. The original payment was twenty-four million dollars. Twelve million in notes, twelve million in stocks. There remained at that time unissued eight million of stock. One million or thereabouts was issued afterwards for cash in subsequent years, but the whole twenty millions was never issued.

Q. You say that there remained at that time, unissued—what was the total capitalization of that 200
company? A. Twenty million.

Q. And that left eight millions that was unissued, except this one million which was subsequently sold? A. Yes, sir.

Q. For cash? A. That is correct; yes, sir.

By Mr. Abbott:

Q. Now, what was done with the nine million of stock, afterwards, at any time?

Mr. McCarter: Where do you get that 201
nine million?

Q. I mean the seven million? A. That seven millions was never issued.

Q. After you organized the E. I. duPont de Nemours Powder Company, then what was done with this seven million shares of stock—the seven millions of stock which had been unissued? A. That still remained unissued. It was never issued.

Q. It was never issued? A. It was never issued.

Q. It was finally cancelled? A. Yes, sir.

Q. Now, how were the shares of stock of your Powder Company divided up? Can you say at this time, without having to refer to the books? (Objection overruled.) A. The shares of the Powder

Company were distributed to the owners of the property for which those shares were paid. The E. I. duPont de Nemours & Company received its share of the stock in payment for its assets, and remained possessed of that stock until the dissolution took place, the dissolution of the E. I. duPont de Nemours & Company, and the stockholders—and that which went to the E. I. duPont de Nemours Powder Company was distributed among the stockholders of the E. I. du Pont de Nemours Powder
203 Company.

Q. I will ask you, Mr. duPont, whether you can state what stocks in the various companies were owned by the E. I. duPont de Nemours Powder Company on September 18, 1908? A. No, I cannot.

Q. Will you furnish a list of such stock? A. Why, I can attempt to get it; I think I can.

Q. Now, then, I will ask you also to state whether you can furnish a list of the number of shares of capital stock issued and outstanding, the capital stock of the E. I. duPont de Nemours Powder Com-
204 pany, outstanding on September 18, 1908; will you do that? A. I think that can be furnished; yes.

Q. I will ask you at the same time to furnish a statement showing all the stocks owned in the various Explosives Companies by the E. I. duPont de Nemours & Company, at the time when the same was organized in 1903, and at any time subsequent to that time, down to September 18, 1909? A. I am not quite clear on that question. Is the question to find out the number of shares owned September 18, 1908?

Q. The question implies the ownership of stocks by the Powder Company from the time of its organization down to September 18, 1908? A. Each acquisition made, do you mean?

Q. Beg pardon? A. Each acquisition made, do you mean, by the Powder Company?

Q. I am speaking now of the stock that it held in other Explosive Companies? A. Yes, but you wish a list of each acquisition of stock made between those dates?

Q. Yes, if you can do so—and the amounts? A. It will take a long while to get them. It can be furnished, I think, though.

Q. Did the Austin Powder Company have any interest in the E. I. du Pont de Nemours Powder Company at any time during its organization? A. Yes. 206

Q. What? How much? A. I can't state that.

Q. Did the Birmingham Powder Company have any such interest? A. I do not know that they did.

Q. Beg pardon? A. I do not know that they did.

Q. Did the California Powder Works have any such interest? A. I think not.

Q. Did the Powder Company have any interest in the California Powder Works? A. Yes.

Q. How much did it have? A. It purchased shares from the E. I. du Pont de Nemours & Company under the original purchase before 1903, and acquired further shares after that, but I can not name the date of the acquisition, or how much. 207

Q. Did the Powder Company own any interest in the Chattanooga Powder Company. Yes.

Q. How much? It owned its original purchase in 1903, and subsequently acquired, I think, all of that stock.

Q. Did it have any interest in the Consumers Powder Company? A. I think not, but I am not certain.

Q. Did the Powder Company have any interest in the Eastern Dynamite Company? A. Yes.

Q. How much? A. It had the original purchase from E. I. du Pont de Nemours & Company, and

afterwards acquired substantially all of the stock I believe. I am not sure of that.

Q. Now, when after that, was that? A. I can not name the date.

Q. Now, are you able at this time to say what interest the Eastern Dynamite Company controlled at the time when you controlled or acquired all of the stock of the Eastern Dynamite Company? A. They owned interests in various corporations, but I can not name them.

209 Q. Can you furnish a list of the corporations that were owned by the Eastern Dynamite Company at the time when you acquired the stock of the Eastern Dynamite Co.? A. I can, yes, sir.

Q. Will you? A. Yes.

Q. Now, did the Powder Company own any interest in the Enterprise Powder Manufacturing Company? A. I believe not.

Q. Did it ever acquire any interest at any time? A. No, I think not.

Q. Did the Powder Company at any time have
210 any interest in the Equitable Powder Manufacturing Company? A. Yes.

Q. How much? A. It had the original acquisition from the E. I. du Pont de Nemours Company, which was about 23 per cent. and eventually acquired up to 49 per cent.; but I can not name the date.

Q. You know whether it had that interest of 49 per cent, during the years of 1903 to 1908—September 18, 1908? A. No, I do not know.

Q. Will you ascertain that fact? A. Yes, sir.

Q. And bring the matter here? A. Yes.

Q. Did the Powder Company have any interest in what is known as the Fairmont Powder Company? A. I believe it had the whole of its original purchasef rom the E. I. du Pont de Nemours Company.

Q. And did it ever acquire any interest, in addition to that at any timed uring its existence and down to and previous to September 18, 1908? A. I can not answer that question. I am not certain.

Q. Did the Powder Company at any time have any interest in the Indiana Powder Company? A. Yes.

Q. How much? A. It had the original purchase from the E. I. du Pont de Nemours & Company, and afterwards acquired substantially all of that stock, I believe. 212

Q. Do you know the date when you say that it acquired substantially all of that stock? A. I do not know.

Q. Did the Powder Company at any time have any interest in the King Mercantile Company? A. Yes.

Q. When did it acquire that interest? A. It acquired the interest of the E. I. du Pont de Nemours & Company in 1903. I am not certain if it acquired any further interest or not.

Q. Is the Laflin & Rand Manufacturing Company a different corporation from the Laflin & Rand Powder Company? A. I do not know the Laflin & Rand Manufacturing Company. It is the Laflin & Rand Powder Manufacturing Company. 213

Q. It is the Laflin & Rand Powder Manufacturing Company? A. It is an entirely different proposition.

Q. What corporation is that? What does it represent? A. It represented a Powder factory in Pennsylvania.

Q. Did the Powder Company have any interest in that corporation? A. No, I think not.

Q. The Lake Superior Powder Company—did the Powder Company have any interest in that? A. Yes, it acquired part of the stock—in part of the stock

the E. I. du Pont de Nemours Company in 1903, and subsequently acquired, I think, all of the stock.

Q. And the Mahoning Powder Company? Did the Powder Company have any interest in that? A. Yes. It acquired 50 per cent interest from the E. I. du Pont de Nemours & Company.

Q. Did it continue to use that interest down to September 18, 1908? A. The Mahoning Powder Company was dissolved, and the Powder Company
215 purchased all of its assets, but I do not know when the dissolution took place.

Q. Now, the Northwestern Powder Company—did the Powder Company ever acquire any interest in that? A. Yes.

Q. When? A. From the E. I. du Pont de Nemours & Company in 1903, and subsequently acquired a further interest. I can not state the date.

Q. The Ohio Powder Company? Did the Powder Company acquire any interest in that company? A. I will make the same answer to that, that it acquired part of the stock of the E. I. du Pont de
216 Nemours & Company in 1903, and subsequently acquired the whole of the stock.

Q. Do you know when it acquired all the stock? A. No, I do not.

Q. The Oriental Powder Mills? Did the Powder Company have any interest in that? A. I make the same answer: It acquired part of the stock—that part of the same du Pont de Nemours & Company stock, and subsequently acquired additional stock of the company.

Q. Was that subsequent to September 18, 1908? A. I can not state the date.

Q. The Phoenix Manufacturing Company. Did they acquire any interest in that company? A. Yes, from the du Pont de Nemours & Company in

1903, subsequently the whole of the stock, at a date that I can not recollect.

Q. Now, I will ask you, in view of the numerous answers which you have given to the questions which I have propounded to you with reference to the interests which the Powder Company had in the various companies, that you will prepare a statement showing all of the interests owned by the Powder Company in any of the corporations which I have named to you, as well as all other powder manufacturing companies, between the time 218
of the incorporation of the Powder Company and September 18, 1908. Will you do that?

By the Court (after objection and argument) to the Witness:

Q. Do you know, Mr. Witness, whether the same conditions prevailed on September 18, 1908, as these exhibits show on this date later in October, 1909? A. No, I do not.

By Mr. Abbott: 219

Q. You do not? A. No.

The Court: You want to show what the situation was on September 18, 1908?

Mr. Abbott: In obedience to the Court's suggestion, and on the request of defendant's counsel, that he bring the time mentioned within the date limited, September 18, 1908 —if the situation as to these matters is the same, then that is satisfactory to us. Otherwise, we are in the dark.

By the Court:

Q. Will that help you any in your reports, Mr.

220 Witness, by simply going back from October, 1909, to September 18, 1908, and ascertaining whether the conditions were in——? A. I think I would have to work from the other end, to make sure of it, to know accurately.

Q. You are willing to make the effort, as I understand it? A. Yes.

Q. Very well. A. Well, may I have that question again, to be sure that I understand it?

221 Mr. Abbott: Well, it will be in the record.

The Witness: It seems to me the reports of what is asked for before as to what was wanting was those dates.

Mr. Abbott: Shall I put the statement in a general way, so that the witness may see what it is that I desire to know?

The Court: You have it in the record now, Mr. Abbott.

Mr. Abbott: Very well, if it is understood.

222 Q. Now, Mr. du Pont, at the time when you took over the interest of the du Pont Company, had you any knowledge of any of the affairs of the du Pont Company between the year 1802 and the year '99, when it became an incorporated company? A. I had practically no knowledge of their affairs.

Q. Did you have any knowledge at any time of any agreements which had been entered into by the du Pont Powder Company and the du Pont partnership with any other explosive companies, with reference to what is known as the Gunpowder Trade Association of the United States?

Mr. McCarter: I object to that. The agreement should be produced.

Mr. Abbott: I am only asking whether this

witness knows anything about this agreement.

Mr. McCarter: He does not purport to say that there was one yet.

The Court: I would suggest that you put in the words "if any."

Q. Well, "if any"? (Objection overruled.) A. I had no knowledge of any agreement.

Q. Had you any knowledge of an agreement known as the "Fundamental agreement," if any? 224
(Objection overruled.) A. No, I had no such knowledge.

Q. Had you any knowledge of the Gunpowder Trade Association, if any such Association existed? A. No, I had no such knowledge.

Q. Did you ever attend the meetings of the Association which was called the "Gunpowder Trade Association"? A. Not, I think, prior to 1902; March, 1902.

Q. Well, did you at any time ever attend any such meetings? A. I do not remember any meet- 225
ings of an Association by that name. It may have had that name.

Q. Did you ever attend any meetings of the Association known as "The Gunpowder Trade Association"? A. I cannot say that I did; no.

Q. I will ask you whether you attended such a meeting on the 2nd day of October, 1902? A. I cannot say that I did; not at this time.

Q. I show you Plaintiff's volume 6 for identification, and refer you to page 1467, and ask you to state whether upon examination of that document, you can refresh your memory so as to be able to answer the last question more definitely? (Objection overruled.) A. I find nothing on this page that refers to the Gunpowder Trade Association.

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Mr. McCarter: Now, you see, there it is. It is not in issue here.

The Court: That answer is conclusive, but another question may be asked.

Q. Now I am going to ask you whether or not you attended a meeting, an annual general meeting of the Manufacturers of gunpowder, held at No. 99 Cedar street, New York City, on the 2nd day of October, 1902? A. I have no such recollection.

227 Q. After examining this reference, your memory is not refreshed? A. No, it is not.

Q. Were you at any time a member of any body or Association of Powder manufacturers, for any purpose, previous to the time when you became an officer in the E. I. duPont de Nemours Powder Company? (Objection overruled.) A. I do not think that I was; I am not certain.

Q. Did you ever attend any meeting, at which there were present representatives of the E. I. duPont de Nemours Powder Company, E. I. duPont de Nemours & Company, the Hazard Powder Com-

228 pany, the Laflin & Rand Powder Company, The Oriental Powder Mills, The American Powder Mills, The Austin Powder Company, The Miami Powder Company, The Ohio Powder Company, The Marcellus Powder Company, Chattanooga Powder Company, The Equitable Powder Manufacturing Co., Phoenix Powder Manufacturing Co., The Schaghticoke Powder Co., the Lake Superior Powder Company and the Birmingham Powder Company? (Objection overruled.) A. I believe that I did; yes, sir.

Q. Well, where were those meetings held? A. In New York.

Q. Do you remember what place in New York? A. I think, at the office of the Laflin & Rand Powder Co.

Q. Do you know what number that was; what street? A. That was, then, 99 Cedar street.

Q. Now, do you know what name, if any, that Association, or that body of representatives of Powder manufacturing companies whose names I have read to you, went by?

Mr. McCarter: Was it a body? I object to it.

Q. Well, if it was not a body, then I will ask 230
you to state for what purpose you attended any such meetings? (Objection overruled.) A. I cannot say the purpose, unless it was to learn of what was being done there.

Q. Well, now do you remember whom you represented, if anyone, at that meeting? A. I do not think I ever represented any one; not officially; as an officer of the du Pont de Nemours Company I went there.

Q. Of the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. Now, do you remember what was transacted 231
—or, by the way, will you state when you attended any such meeting—what was the date? A. I can not state the date at all.

Q. Well, what year was it? A. Well, it was some time after March 1, 1902, but I cannot say how long afterward.

Q. But you did attend meetings of that character after March 1, 1902, didn't you? A. Yes, I attended more than one meeting, I think.

Q. Now, will you state how many such meetings you attended? A. I should judge three or four, possibly.

Q. Do you remember attending a meeting at which there was present at the time, Mr. T. C. du Pont? A. Yes, I think I remember it.

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Q. Do you know whom Mr. T. C. du Pont represented, if anybody, at that meeting? (Objection overruled.) A. The E. I. du Pont de Nemours & Company.

Q. And do you know whether he represented any other company? (Objection overruled.) A. No, I do not.

Q. Now, do you remember whether anything occurred at that time with reference to the change, or any change, of officers of the Association? A.
233 No, I do not.

Q. Do you remember who was the recognized head of that Association previous to October 2, 1902?

Mr. McCarter: It does not appear that there was an Association. He is assuming all the time that there was an association.

The Court: You are perhaps assuming more than has been shown.

Mr. Abbott: I think the question may
234 be objectionable for that reason. I will put it in this way.

Q. To the best of your recollection, what was the purpose of the organization or meeting of these manufacturers, and was or was not that Association governed by any rules or regulations or any other writing, in any manner?

Q. I will ask you to state whether the manufacturers or representatives of the various companies, whom you state were represented at that time, were controlled in their deliberations by any agreement, writing, or rules? A. Not that I know of, no.

Q. Did you ever know of the existence of any

rules or regulations which governed or controlled the conduct of those meetings? A. No, I think not.

Q. Did you know of any rules or regulations which governed or controlled these corporations and associations in any manner whatsoever with reference to the meeting to which you testified you attended? A. I can not say that I ever saw any such rules or regulations, no.

Q. Now, did you know of any agreement which was technically called the "Fundamental Agreement," that was in the first place spoken of in that 236
way? Did you ever know of any such agreement? A. I can not remember any name of that kind.

Q. Do you remember it as an agreement which was called "The Understanding?" A. No, I think not.

Q. Do you remember that agreement which was called "The Abstract"? A. No, I do not.

Q. Do you remember it as an agreement that was called "The Auxiliary?" A. No, I do not.

Q. Do you remember any rules or regulations which were called "The Compendium of Rules?" A. No, I do not. 237

Q. Do you remember it as an agreement known as the "1896 Agreement?" A. I have no recollection of seeing such an agreement, no.

Q. Do you recall whether there ever was an agreement which you know of that was—to which that title was given? (Objection overruled.) A. May I have the question read pleace. I think there was an agreement of 1896, yes.

Q. Now, do you know what the contents or terms of that agreement was or were? A. No, I don't.

Q. Would you recognize it if you should examine it? A. I don't know as I would know. I don't think I ever saw such an agreement.

Q. I refer you now to Government's Exhibit No.

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7, which appears on page 110 of United States of America against E. I. du Pont de Nemours & Company, marked as Plaintiff's Exhibit 4, and ask you to look at page 110 and subsequent pages and state whether or not you can refresh your memory so as to be able to state whether that is the agreement which you have referred to. (Objection overruled.) A. This seems to be an agreement dated——

239 Mr. Graham: Never mind stating what it is; answer the question.

The Court (to the witness): That is not the point; does this refresh your recollection?

The Witness: No; it does not.

The Court: He says no; it doesn't refresh his recollection.

Mr. Abbott: Yes; but I beg one moment, please, before we pass that.

240 Q. Does the subject matter in that agreement in any way refresh your memory as to the subject matter of the agreement which you state you have some knowledge of, known as the "1896 agreement"? A. No; it does not.

Q. Does not refresh your memory in any way? A. No; I think not.

Q. Now, I will ask you to state whether this agreement, which you called the "1896 agreement" was in writing or was oral? A. Why, I suppose in writing; I do not know; I have never seen the agreement.

Q. I beg your pardon. I did not hear the witness. A. I don't remember ever seeing the agreement.

Q. You did not know the terms of the agreement in any manner? A. No; I don't.

Q. I will ask you whether it was oral or in writing? A. No, I do not know.

Q. Will you kindly state what it was that you had in mind when you answered that you believed there was such an agreement as the 1896 agreement? I only want you to state what you had in mind.

A. My recollection is that after March 1, 1902, when I came into the business that I was told there was an agreement, which was the one that I referred to; I do not know——

Q. What was the agreement you referred to? 242

Q. Was that agreement in writing? A. I was not told. I suppose it was.

Q. You supposed it? A. Yes.

Q. Now, do you know—you say you were told it was in writing? A. No, I was not told.

Q. Did you at any time ascertain in whose possession that agreement was kept? A. No, not that I remember.

Q. By whom were you informed that such an agreement was in existence? A. I don't remember who it was; I assume it was Mr. F. G. duPont.

Q. Mr. F. G. duPont? A. Yes. 243

Q. Where is Mr. F. G. duPont now? A. He has since died He was one of the former stockholders in the old corporation.

Q. What, if any, official position did Mr. duPont hold in the company, the old duPont Company? A. I don't know what position he held.

Q. Do you know whether he had possession of any of the records of that company? A. I think not.

Q. Mr. duPont, I would like to have you state whether I am correct in the statement that I will now make to you concerning the consecutive order in which the various corporations that represent that corporation.

the duPont interests were organized. As I under-

stand it, the first corporation which took over the duPont interests was called the E. I. duPont de Nemours & Company that was the duPont Company, the original duPont Company, is that correct? A. That is correct; yes.

Q. The next corporation was E. I. duPont de Nemours Company, whose name was afterwards changed to "& Co."? A. Yes.

Q. That was the corporation that you and Mr. T. C. duPont and Alfred I. duPont organized to
245 take over the duPont interests? A. That is correct.

Q. Now, the next corporation, as I understand it that took over any portion of the duPont interests was the Powder Company, is that correct? A. That is correct, the E. I. duPont de Nemours Powder Company.

The Court: That was a New Jersey corporation?

Mr. Abbott: That was a New Jersey corporation and the defendant in this case.
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Q. Now, I would ask you to state who E. I. duPont was, from whence you got the name of E. I. duPont? A. E. I. duPont was the founder of the duPont Explosives business in this country, who came to this country in 1802.

Q. What does the word "deNemours" mean? A. That was the name of the place from which duPont came in France.

Q. What is the object, if any, that you had, in carrying that name "E. I. duPont deNemours" into the various companies which were organized when it seems to be more or less confusing, to most of us? A. It had always been the name of the companies and the company's business was identified

with that name and it was a valuable name in the trade.

Q. In what respect was it a valuable name in the trade? A. In the same way a trade mark would be.

Q. Now, the other companies, which I understand were organized for the purpose of taking over some of the interests which afterwards were consolidated with the Powder Company, were in this order: First, the Delaware Securities Company—is that correct? A. That is correct, yes.

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Q. Now the Delaware Securities Company took over the interests of the Laflin & Rand which had already been acquired by the duPont interests, is that correct? A. No, not quite correct. It purchased the capital stock of the Laflin & Rand Powder Company.

Q. The entire capital stock? A. Yes.

Q. Now the next corporation, as I understand it, was the Delaware Investment Company? A. Yes.

Q. What was the purpose of that? A. It purchased part of the capital stock of the Moosic Powder Company.

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Q. And the Moosic Powder Company, where was that located? A. Its mills were located in Pennsylvania.

Q. Now, the next corporation, as I understand it, was the California Investment Co.? A. I think so, yes.

Q. And what was it that the California Investment Company acquired? A. It purchased the stock of the Judson Dynamite & Powder Company.

Q. And where was that located? A. In California.

Q. Then after these companies were all organized and had acquired the various interests which you have indicated the Powder Company came into existence and it subsequently acquired all of the in-

terests which these other corporations had held, is that right, all of that physical property? A. The Powder Company at first purchased the shares of these various corporations.

Q. Yes. A. The purchase of the property of E. I. duPont deNemours & Company carried with it the shares of the Delaware Securities Company and so on.

Q. Now the International Smokeless Powder Company—one of the defendants in this case—do
251 you know anything about that corporation? A. Yes, I do.

Q. Now, when was that organized? A. Somewhere between 1890 and 1900, I haven't the exact date in my mind.

Q. What was the general purpose of that corporation? A. Its chief purpose seems to have been the manufacture of smokeless powder.

Q. Was it engaged in that business? A. It did, yes.

Q. Was that company in existence at the time
252 when the Powder Company was organized? A. Yes.

Q. Did the Powder Company acquire any of the interests of that company? A. No.

Q. Not at any time during its existence? A. No.

Q. That is separate and distinct. Now the corporation known as the Eastern Dynamite Company, one of the defendants in this case—— A. Yes.

Q. ——when was that organized? A. In 1895, I think.

Q. And what was the general object and purpose of that corporation? A. The manufacture of dynamite.

Q. Dynamite, as I understood it was deemed a separate field, a separate explosives field, was it not? A. Quite separate from black powder.

Q. It had nothing to do with the original explosives business in this country? A. No.

Q. About when did the exploitation of dynamite as an explosive come into existence? A. It was between the year 1870 and '75.

Q. And this Eastern Dynamite Company; will you describe what the interests were that it had acquired when it began business? A. I can not name exactly; it acquired the stock of the Repanna Chemical Company and that of the Hercules Powder Company. 254

Q. And those two corporations were engaged in the manufacture of dynamite, were they? A. Those two corporations were both manufacturing dynamite and were both organized by the du Pont interests, if I am properly informed.

Q. Now, as I understood you yesterday the stock of the Eastern Dynamite Company was also finally absorbed by the Powder Company? A. Yes.

Q. So that after the Powder Company was organized it acquired all the interests in the explosive trade which were represented by the du Pont interests, by the Laflin & Rand interests, by the Eastern Dynamite Company and the interests which that company had in the dynamite business, is that correct? A. That is not correct. The E. I. du Pont de Nemours Powder Company acquired all the interests of the Laflin Rand Powder Company through the E. I. du Pont de Nemours & Company, unrelated when the E. I. du Pont de Nemours Powder Company was formed it acquired through the E. I. du Pont de Nemours & Company the Laflin Rand interests and the Eastern Dynamite interests. 255

Q. Referring to the E. I. du Pont de Nemours & Company again, which was the company which you organized—I will refer to it as your company

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for the purpose of identifying it in the minds of the jury—I want to inquire again concerning the matter of the stock of that company and how it was originally issued; yesterday, I want to confess to you that I was somewhat at sea myself; I would like to ask if I am correct this morning. As I understand it—if I am wrong in this you will please correct me—after the organization of that company and it had turned over to the du Pont stockholders the interests it had purchased of the original du
257 Pont company, as I understand it, it paid them twelve million dollars in notes and twelve million dollars in stock. Is that correct? A. No, that is not correct.

Q. Well, then, will you explain that once more? You gave them twelve million dollars in notes, did you not? A. Yes.

Q. You paid twenty-four million dollars for the property, did you not? A. Yes.

Q. What was the payment, the difference between the twelve million dollars in notes and the
258 twenty-four million dollars which you gave for the property, what was that made up of? A. The transaction was made in this way: Mr. T. C. du Pont, acting for himself; Mr. Alfred du Pont and myself, had made a bargain with the former owners of the property by which they agreed to sell for fifteen million dollars, twelve million dollars in notes and three million dollars in stock; the corporation which we organized agreed to purchase that property for twelve million dollars in its notes and twelve million dollars in its stock. Mr. T. C. du Pont received the notes and the stock, turning over the fifteen millions to the sellers of the property, and he and Mr. Alfred du Pont and myself retained the balance of the stock.

Q. Well now, how much was that stock that you

three gentlemen retained? A. It was in the neighborhood of eight million dollars, I think.

Q. Now, $8,000,000 out of the total of how many million dollars, Mr. duPont? A. $12,000,000.

Q. So that you had in that way three-fourths of the stock which was issued for the stock which you had taken over—the duPont interests? A. I think the actual percentage was seventy-two per cent.; it was approximately three-fourths.

Q. Did you continue to retain the ownership of that stock for some years? A. Yes. 260

Q. Did you retain it down to September, 1908? A. Yes.

Q. That stock had been issued and was in your possession? A. Yes.

Q. After the Powder Company was organized, which was the next successor of your company? Will you describe how that company took over the interests which your company had? A. At the time of the organization a complete appraisal was made of all of the properties of the E. I. duPont deNemours & Company, and of the corporations in which 261 it was interested, and the Powder Company paid for the shares of those various corporations according to the appraisal; each share was appraised according to the value of the property represented by it, and was paid for in the securities of the E. I. duPont deNemours Powder Company.

Q. Well, after the Powder Company had taken the stock—had taken over the properties of your company—which I designate as "your company"—you still retained your control over the stock which was received by you in exchange for those properties, did you not? A. This stock of the Powder Company was received by E. I. du Pont de Nemours & Company and retained in their treasury.

Q. Retained in their Treasury? A. Yes.

Q. E. I. du Pont de Nemours & Company was under your control by reason of the fact that you held three-fourths of the issued stock? Is that correct? A. Under the control of Mr. T. C. du Pont, Mr. Alfred du Pont and myself; yes.

Q. I say "you" collectively; you three gentlemen? A. Yes, sir.

Q. That condition remained until September, 1908, did it? A. Yes.

263 Q. In other words you, T. C., and Alfred I. had entire control of all the du Pont interests which had been known as the du Pont interests previous to the organization of your company, and of all of the interests which had been previously known as the Hazard interests, and of all of the interests which had been known as the Laflin & Rand interests, and of all of the interests which had been known as the Eastern Dynamite Company, and of all of the interests which were thereafter known as the Powder Company interests, through your control of the ownership of the stock in your company; is that correct, down to September, 1908? A. Yes; but not through virtue of the formation of the Powder Company. That control was exercised prior to the Powder Company's formation.

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Q. Yes, but after the Powder Company's formation you still retained control of your stock and retained control of the properties which you had received from the Powder Company in payment for the properties which you had turned over to that company? A. That is correct, yes, sir.

Q. Did you ever know of an agreement which was designated the "European Agreement"? A. Well, not under any such name, no.

Q. Well, do you know about any agreement that has any reference to the foreign powder business, in which your company or any of your interests

were associated? A. Yes.

Q. What was the name of that agreement? A. I doubt if it had any name.

Q. How did you designate it in your own mind? A. As the "Nobel Agreement," from the fact that the Nobel Powder Company was a party to it.

Q. Did you ever see the agreement? A. No.

Q. You know nothing of the terms of the paper then? A. Not by examination of the agreement, no.

Q. I think that I did not yesterday ask you 266
whether you could give me the names of the various corporations which were owned or controlled by the Laflin & Rand Powder Company. Did I make that inquiry of you? A. Yes. I could not give them.

Q. I refer you to page 495, of the record which I called to your attention yesterday. (Vol. 1 of the testimony of defendant's records) and ask you to look at the marks there and state whether or not it refreshes your memory so that you can give a list of those corporations.

Mr. Graham: I do not think that is the 267
way to refresh a witness's memory.

Q. Well, what you see on that page then. A. I think from this that I can name the companies in which the Laflin & Rand Powder Company were interested.

Q. Will you kindly do so? A. The Birmingham Powder Company; the Chattanooga Powder Company, the Eastern Dynamite Company, the Fairmount Powder Company, the Laflin Powder Manufacturing Company, the Lake Superior Powder Company, the Mahoning Powder Company, the Marcellus Powder Company, the Monarch Powder Company, the Oriental Powder Mills, the Phoenix

Powder Manufacturing Company. Now, there are three companies named here but I'm not certain the Laflin & Rand Company were interested in, and it does not appear from this record—the Indiana Powder Company, the Northwestern Powder Company and the Oriental Powder Mills.

Q. Now, referring to this Association or to this meeting of manufacturers—which you say you had some knowledge of and attended their meetings—I will ask you to advise me, as I read certain
269 names, whether you have ever seen the persons whose names I read to you at any of those meetings, Mr. T. C. du Pont? A. Yes.

Q. Mr. Eugene du Pont? A. Not that I remember, no.

Q. Mr. W. S. Colvin? A. I am not certain about seeing him.

Q. Mr. A. J. Moxham? A. Yes.

Q. Mr. J. A. Haskell? A. Yes.

Q. Mr. A. W. Higgins? A. Yes.

Q. Mr. J. B. Coleman? A. Yes.

Q. Mr. E. B. Drake? A. No. I do not remem-
270 ber seeing him.

Q. Mr. Harry Ballou? A. Yes.

Q. Mr. A. Lent? A. Yes.

Q. Mr. E. L. Lawrence? A. Yes.

Q. Mr. W. A. Beecher? A. I cannot recollect. whether I have seen him there or not.

Q. Mr. F. H. Connable? A. Yes.

Q. Mr. F. W. Olin? A. Yes.

Q. Mr. J. H. Moulton? A. No. I do not remember seeing him.

Q. Now, would you know, or did you know, who any of those gentlemen represented at that meeting at any time, or in what capacity they appeared there? A. Only from knowing what corporation they were officers of.

Q. Now, I will ask you if you know whether Mr. T. C. du Pont represented the E. I. du Pont de Nemours & Company and the Sycamore Powder Company? A. I only know that he was an officer of E. I. du Pont de Nemours & Company, but I do not know who he represented. I suppose he was representing his own corporation.

Q. Do you know who Mr. Eugene du Pont represented? A. No. I do not remember having seen him there.

Q. Do you know who Mr. Colvin represented? 272
A. Well, if Mr. Colvin was at those meetings, he was president of the Hazard Powder Company, I would suppose he would represent that corporation.

Q. Do you know who Mr. Monham represented? A. He was an officer of the Hazard Powder Company also.

Q. Do you know who Mr. J. A. Haskell represented? A. He was president of the Laflin & Rand Powder Company.

Q. Do you know who Mr. A. W. Higgins represented? A. He was secretary of the Laflin & 273
Rand Powder Company.

Q. Do you know who Mr. J. D. Coleman represented? A. He was either president or vice-president of the Oriental Powder Mills.

Q. Do you know who Mr. Murray Ballou represented?

Mr. Graham: He said he didn't see him there.

Q. I thought you did see Mr. Murray Ballou there —very well. Did you see Mr. Drake, one or the other of those gentlemen? A. Mr. Murray Ballou was an officer of the American Powder Mills.

Q. Do you know who Mr. Lent represented? A. He was president of the Austin Powder Company.

Q. Do you know who—did you say you knew Mr. Lawrence was present at any time? A. Oh, yes; I think I recollect Mr. Lawrence being there.

Q. Now, do you know who he represented? A. I believe he was an officer of the Miami Powder Company.

Q. Mr. Beecher, do you know whom he represented?

Mr. Graham: He didn't say he knew he was there.

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Q. Did Mr. Connable—do you know whom he represented? A. If he were there, he was an officer of the Austin Powder Company.

Q. Mr. Connable, whom did he represent? A. He was an officer of the Chattanooga Powder Company.

Q. Mr. Olin? A. He was an officer of the Equitable Powder Manufacturing Company.

Q. Mr. Moulton—you said you didn't know whether he was there? A. I am not certain that any of these gentlemen represented these corporations or not, they were officers of the corporations.

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Q. I understand that. I will ask you to state whether Mr. A. J. Moxham, Mr. W. S. Caldwell, Mr. J. A. Haskell, and Mr. F. L. Connable have at any time been associated with you in any capacity in any of these other corporations with which you have been associated since you became interested in the Powder business? A. They have all been officers of several corporations, I think.

Q. Can you tell me what corporations Mr. Moxham has been an officer in? A. He is an officer of the E. I. du Pont de Nemours Powder Company, and he was either president or vice-president of the Hazard Powder Company.

Q. Was he an officer of the Delaware Investment

Company? A. I believe he was, yes—in the Delaware Securities. I am not certain about it.

Q. Do you know what position he held in those companies? A. My recollection is, he is vice-president of both those companies.

Q. Now, Mr. J. A. Haskell, has he ever been associated with you in any of these corporations? A. Yes.

Q. What position has he held? A. He is vice-president of the E. I. du Pont de Nemours Powder Company, and President of the Laflin & Rand Powder Company and President of the Eastern Dynamite Company. 278

Q. Was he interested as a member of the Board of Directors of any of the other companies in which you were interested? A. I think likely, but I don't recall with which companies.

Q. Now, Mr. Coleman, J. B. Coleman, what was he, was he interested in any way as an officer of any of the corporations in which you were interested? A. He was president, I think, of the Oriental Powder Mills.

Q. I meant any of these corporations organized after the taking over of the du Pont interests? A. I don't remember that he was connected with any of them. 279

Q. Mr. Connable, did he hold any official connection in any company after the taking over of those properties? A. No, his only position was an officer of the Chattanooga Powder Company.

Q. You stated, I believe, that he was connected with these companies in some capacity. In what capacity was it? A. Not in an official capacity.

Q. What was it? A. He was connected with the E. I. du Pont de Nemours Powder Company, manufacturing company, in the manufacture of black blasting powder.

Q. What is his official title, or what was his official title? A. I don't remember that he had any official title.

Q. Mr. Colvin, what position, if any, did he hold in any of these companies? A. He was president of the Hazard Powder Company. I knew of no others.

Q. Since that time? A. I think of no other.

Q. You say he was associated with you in what capacity? In what capacity has he been associated
281 with you since that time? A. Only as president of the Hazard Powder Company.

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Q. Mr. du Pont, with reference to the International Smokeless Powder Company I will ask you to state whether or not, if you know where there is any other company manufacturing smokeless powder? A. Besides the International Company?

Q. Yes? A. The E. I. du Pont de Nemours & Company manufactures smokeless powder.

Q. Was any such company manufacturing smoke-
282 less powder previous to 1903? A. Previous to the organization of the Powder Company, yes. The E. I. du Pont de Nemours & Company manufactured it.

Q. Previous to the organization of that company? A. Oh, E. I. duPont de Nemours & Company, prior to the organization of the Powder Company?

Q. I am saying now previous to the organization of the E. I. duPont de Nemours & Company. Was there any other company or manufactory of smokeless powder except that which was owned by the International Smokeless? A. You are speaking of the corporation organized in 1902?

Q. What were the manufactories—where were the manufactories located that were engaged in

the manufacture of smokeless powder previous to 1902? A. The E. I. duPont de Nemours & Company manufactory, the Laflin, Rand Powder Company, the International Smokeless & Chemical Company, the California Powder Works, the Robin Hood Powder Company, the Kind Powder Company, the American E. C. Schultz Powder Company. I think that is all.

Q. Can you state who were the owners of the various manufacturing plants that you have just now named? A. Why, the corporations which I 284 have named?

Q. Oh, they were corporations? A. Yes.

Q. Did those corporations afterwards come under the control or management of any single corporation, if you know? A. The Laflin & Rand Powder Company by a purchase of its stock came under the control of the E. I. duPont de Nemours Powder Company; the International Smokeless Powder & Chemical Company sold their capital stock—their capital stock was acquired by the duPont-International Company; the California Powder Works, a large percentage of its stock was already owned 285 by the E. I. duPont de Nemours Powder Company—had been a great many years—and the King Powder Company was never owned by any one else that I know of; neither was the Robin Hood.

Q. Now what was done with the interests which the duPont Powder Company and the E. I. duPont —I should say the duPont Company of 1899 and the du Pont Company which you organized, had in these smokeless manufacturing plants, what has become of that interest? A. Those plants were eventually acquired by the E. I. duPont de Nemours Powder Company.

Q. So that the Powder company afterwards became interested in the smokeless powder manufacturing business? A. Yes.

Mr. McCarter: After the period of September 18, 1908, as I understand it, right along, am I wong or right about it?

Witness: That is incorrect.

Mr. McCarter: Then I withdraw my objection.

Q. When did the Powder Company acquire those interests? A. I will take them serially. The Smokeless Powder business of the E. I. duPont de Nemours & Company was acquired with the bal-
287 ance of the property in 1903, the California Powder Works was already owned by the E. I. duPont de Nemours & Company; at the same time also passed to the E. I. duPont de Nemours Powder Company, likewise the factory of the Laflin & Rand Powder Company, and in 1903 the E. I. duPont de Nemours Powder Company acquired a controlling interest in the duPont-International Powder which in turn owned the control of the capital stock of the International Smokeless Powder and Chemical Company.

288 Q. And did the Powder Company retain that control down to September 18, 1908? A. Yes.

Q. Oh, I beg pardon, did I interrupt before you were finished naming the list, Mr. duPont? A. I think not; I think I named them all.

Q. Oh, yes, the American E. C. Schultz Company, the stock of that was acquired by the E. I. duPont de Nemours Powder Company? A. I cannot state the date, it was after 1903 though.

Q. Did the acquirement of that interest have anything to do with what I have designated as the foreign agreement and which you stated was known to you by some other name?

The Court: You used the word "Nobel."

The Witness: N-O-B-E-L. No; it had nothing to do with that.

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. Mr. duPont, I understood you to say that the duPont interests were originally organized in 1802, and that it existed under the same name of E. I. duPont de Nemours & Company as a copartnership down to 1899, and then as a corporation for a couple of years under the same name, prior to the time you came into the business; is that correct? A. That is correct; yes, sir.

Q. Now, during that one hundred years I understand that for a long time they were the pioneer company in the business, and introduced the business into the United States, is that correct? A. That is correct; yes, sir. 290

Q. And at that time of course they had the whole of it? A. I believe so; yes, sir.

Q. And at that time, I understand, the principal explosive outside of military explosives was black blasting powder? A. Yes.

Q. And for many years thereafter, and, in fact, up to about 1875? A. That is correct, yes.

Q. And the business originally started as I understand it on the Atlantic seaboard near Wilmington? A. Yes. 291

Q. And as mining operations and the construction operations developed westward the business followed those operations, did it not? A. That is correct.

Q. And then the Laflin & Rand Powder Company and the Hazard Powder Company were also old corporations, were they not? A. Quite old. I think the Hazard Powder Company was organized about 1854 or 1856, and the Laflin & Rand, under another name, was doing business as early as 1820.

Q. Now then, as the development of that business proceeded westward did it become necessary from time to time either to build plants in the

vicinity of the consumption of black powder, or to acquire interests in other plants, in order to hold the trade that had heretofore been established in that business? (Objection overruled). A. The E. I. duPont de Nemours & Company owned the factory at Wilmington. That was the only factory they owned from 1802 to about 1889 or 1890. As business progressed westward they purchased interest in other factories or companies manufacturing explosives.

293 Q. Well, my question was aimed to bring out the fact that it was necessary to do that. What was there in the situation that made it desirable or necessary to have those plants near the points of consumption. (Objection overruled.)

Q. Just describe the situation, Mr. du Pont. A. The freights on explosives were very high, the highest freight rates known. That means that the transportation from the factory on the eastern seaboard westward was very expensive, and it was necessary to have factories comparatively near the

291 point of consumption in order that the excessive freight rates might be saved. The E. I. duPont de Nemours & Company was always in control of the duPonts, who looked after their own manufacturing business at Wilmington. Their policy seems to have been clearly to have bought into other companies, rather than building factories at the various points for themselves. I suppose they divided the risk thereby and brought in other local interests who were valuable to the business.

Q. And in that connection, is it true that the Birmingham Powder Company and the Chattanooga Powder Company and the Indiana Powder Company, and these other various black powder companies that have been mentioned here did have plants largely scattered throughout the country,

contiguous to these various markets that had developed in this way? A. That is correct, yes.

Q. Now, were those plants valuable plants and well adapted to the furnishing of the trade in those respective localities? (Objection overruled.) A. I understand that they were all valuable plants, from the fact that they all continued operations for years, and have proved valuable and well adapted as to location for serving the trade.

Q. Now the Hazard Company, you say has been acquired by the duPont Company. Where was its 296
plant located? A. Hazardville, Connecticut.

Q. Can you state whether or not the Hazard Company had established a trade in black blasting powder as far west as the Pacific coast? A. I know that they did sell powder on the Pacific Coast, yes.

Q. Do you know that they did ship powder around the Horn in sailing vessels for the western trade there? A. Yes.

Q. Prior to the time it was acquired by the du-Pont interests? A. I cannot say that, no. I do not know whether they did or not. 297

Q. Well, now, as I understand it the dynamite business was one that developed in the seventies. What did the duPont Company have to do with the development and introduction of that business? A. The dynamite business had started some years before the duPonts entered into the manufacture at all. They were much divided as to the merits of dynamite, and as to its dangers and so on, and finally in 1880 decided that they would enter into that business, but the partnership was not willing to take the whole burden, and therefore they divided the interests. They took a share and Mr. Lamonte duPont individually took a share and the Laflin & Rand Powder Company and the Hazard Powder Company, which were of course the du-Pont interests.

Q. Now, that was some years before the organization of the Eastern Dynamite Company, the interest which has been referred to here as the dynamite interests? A. About 15 years before, yes.

Q. Now then is it not true that at the time that that venture was made that dynamite in the eastern part of the United States was at least in a very much of an experimental state? A. That is very true; yes, sir.

299 Q. And the entry of the duPont Company into that business was in the nature of an original cash investment in several different companies at the time those companies were formed, was it not? A. They actually formed the Repauno Chemical Company. They did not buy into it. They organized it themselves, and the Smokeless Powder Company, I understood, had purchased stock, and also the Eastern Dynamite Company.

Q. Well, at the same time stock was also purchased, as I understand, by the Laflin & Rand Company on account of the reason you mentioned, and

300 by the Hazard Company, is that correct? A. Yes, sir.

Q. Therefore then the Eastern Dynamite Company came to be formed in 1895. It is by a combination in at least a very large measure of this original investment which has been made 15 years before? A. Nearly entirely as I understand it.

Q. In other words, it was an amalgamation of previous interests, and of course at that time the Eastern Company itself was owned by the people who had put in the money to form the Rampauno and the other company in 1880, is that correct? A. That is correct, yes.

Q. Therefore, in a measure it was true that as an original proposition, the Laflin & Rand Company and the duPont Company did co-operate with the

defendants in the extension of the various lines of explosive business, is it not? A. That is correct, yes. I would like to state in regard to the Eastern Dynamite Company when that was formed there were minority stockholders in that corporation; that the entire capital stock was not in the Laflin & Rand Company.

Q. But they controlled it, did they not? A. Yes.

Q. Now then, you were asked about the amount of the capitalization of the corporation in 1889, that the old duPont partnership formed for the 302
purpose of taking over the assets of the partnership, and I believe it was the E. I. duPont de-Nemours & Company. I would say it was in 1890, however. You state that that was $2,000,000, and I believe you stated that that capitalization had no reference to the actual value; in other words, it was more or less nominal. Now, how many partners were there in the co-partnership that immediately preceded that corporation? A. Six.

Q. And as I understand the operation, you simply turned your property over to this corporation, and took back in the same proportion the stock of 303
that corporation, is that correct? A. That is correct; yes, sir.

Q. Therefore after the operation they then owned the respective portions in that property that they held while it was in the co-partnership form? A. That is correct; it was simply a transfer.

Q. And for that reason it was entirely immaterial whether the capitalization was $2,000,000 or a hundred million, so far as the respective interests were concerned? A. Quite immaterial, yes.

Q. Now you were inquired of in reference to the nature of the assets that were taken over by you in the company. Is it not true that in addition to the assets that you mentioned, there were a large

value taken over in good-will, etc., and in tangible assets of that class? A. Well, of course, yes; all the trade marks of the former corporation and the good-will of the customers, and the patents owned by them as to the secret processes, which are still held valuable, were all transferred. The new corporation took over everything, tangible and intangible, belonging the the old corporation.

Q. Well, was a large body of the property of that character? A. Yes, there was. It is an in-
305 tangible amount and it cannot be definitely defined and valued.

Q. The accumulation of a hundred years? A. Yes, surely. The old corporation kept nothing in that line.

Q. Now, it is true that there was an organization running each one of your plants at that time, is it not, with skilled hands and experts in the manufacture of explosives? A. Yes, a very large number.

Q. That organization was taken over, was it? A. Yes, all of the men were taken over.

306 Q. Was there any department in that business established with reference to the development and the art and science of the manufacture of explosives? A. It had always been the policy of the duPonts to experiment largely in new forms of development, and devices for safety, and that policy was continued and has been continued until to-day.

Q. Well, now, as I understand it you and these two associates of yours formed the new corporation and took over that propety. At that time or later than that did you make an investigation, or more careful investigation of the nature of the property that had been transferred to you, than you had previously made? A. There were two investigations made. About March, 1902, when I first became interested, I made as exhaustive examination as I

could from the company's records as to the value of the property and was satisfied that the values placed on them first were correct, or reasonably so. In 1903, when the E. I. duPont de Nemours Powder Company was formed, as there was a large minority interest which was coming into the company, we thought it best to have a detailed appraisal made of everything in which the minority stockholders should have representation, if they choose. And these committees were appointed to appraise, and everything was carefully gone into 308 and an accurate appraisal made.

Q. Well, now, you discovered that the tangible property which was taken over consisted of four plants, together with the quick assets of one sort and another, and a line of stocks in these various corporations scattered throughout the country that has been mentioned. Can you state approximately how large a portion of the value of the property taken over was comprised in these stocks of other corporations? A. My recollection is that the stocks of the other manufacturers of explosives were valued at about sixty per cent. of the total assets. 309

Mr. Abbott: We object to the witness' answer to this question unless he furnishes a statement giving in detail his information as to how this appraisal was brought about. We think that the witness' recollection of the matter should not be permitted at this time, in as much as he has indicated that there was a formal appraisement made of the properties, and we ask to have the appraisement itself, as the best evidence.

The Court: What have you to say, Mr. Laffey?

Mr. Laffey: Why, I think it is unneces-

sary to produce the appraisal for the simple purpose of showing the proportion. All that I am going into is to show the property that was held in the shape of capital stock, and not the property held in the shape of plants. I am asking what the prospective purchasers were.

The Court: Well, it does not seem to me that that is necessary, Mr. Abbott, to produce the appraisal.

311 Mr. Abbott: You will recall that on the direct examination I endeavored to draw out of this witness something with regard to the appraisal of the various properties taken over, and he would not and did not give me any answer at that time concerning the matter, and it was more or less objected to on the other side. Now, I have no objection at all to go into the matter of the appraisal provided we have definite information upon that subject, so that we may be able to take it up.

312 The Court: Is he not simply bringing out what you tried to bring out yourself?

Mr. Abbott: Yes, but he is bringing it out on the oral testimony of this witness.

The Court: You may re-examine if necessary and you may move to strike out the witness' testimony and ask for the production of the appraisal.

Mr. Abbott: Very well.

Q. Then the sixty per cent. of this property in value was held in the shape of powder stock of these corporations scattered through the country. Did you have a majority of the stock in any of those companies, outside of the Hazard Company? A. Did we have?

Q. Yes, did you have? A. I think we did in some of them, but I cannot name which ones.

Q. Well, in most instances, it was a minority interest, was it not? A. Yes, it was less than fifty per cent.

Q. Did you find out who the other stockholders in those same corporations were that made investigation? A. Yes.

Q. And who did you discover them to be, the principal stockholders, other than yourselves? A. E. I. du Pont de Nemours & Company was the 314
largest stockholder, and I think in almost all of the corporations, and the Laflin & Rand Powder Company was the next largest stockholder.

Q. Was that the condition of affairs which you had known at the time that you bought these properties? A. No.

Mr. Abbott: That is objected to; it calls for a statement of the witness regarding this written exhibit—I should say this appraisal.

The Court: Why, I do not think it is necessary to have the appraisal here, the witness 315
can speak from his own recollection. It may be partly due to this.

Mr. Abbott: I do not understand that that is a fact; the appraisal, as I understand it, was made afterwards.

Q. Now, that being the fact, Mr. du Pont, what did you determine to do in regard to those corporations and what were your reasons for doing it? A. The determination was to purchase, if possible, further stock in these corporations or to make a plan by which the minority stockholders should have common interests in the whole concern.

Q. Why did you do that? A. It was from our

point of view practically impossible to manage a business so widely scattered, when there were so many different interests that could not be harmonized in any other way. The du Pont Company was largely interested in all the corporations—in fact, was the controlling factor from the virtue of the fact that they were the largest stockholders and were best versed in the line of business in which the companies were engaged. Many of the minority stockholders were not practical men or had nothing
317 to do whatever with the business.

Q. Going back for a moment to the old du Pont Company, you bought that property, as I understand it, shortly after the death of Eugene du Pont, who had been the manager of it practically for some years? A. That is correct; yes.

Q. Was there anybody else connected with that end of the business who at that time was capable of taking up that management? A. As far as I know, Mr. Eugene du Pont did all of the administrative work; no one else was well acquainted with it.

Q. Now, then, in the case of the Laflin & Rand
318 Company, did you find out from this investigation who the principal stockholders of that concern were? A. Yes.

Q. Who were they? A. There were three principay stockholders who together owned 54 per cent of the stock—Mr. Riker, Mr. Boies, Mr. Parsons.

Q. Now, were Mr. Boies and Mr. Riker people of advanced age? A. They were both men of, I imagine, 65 to 70 years at the time, and neither had been active in business for some little time; Mr. Boise had within comparatively recent years, but he was anxious to retire.

Q. Had Schuyler Parsons ever been active in the management of the Laflin & Rand Company? A. Not that I know of.

Q. Therefore, the situation in regard to the internal affairs of the Laflin & Rand Company were somewhat similar to those of the old du Pont Company at the time you purchased it, were they not, in those regards? A. Yes, excepting the de..... of no partner or stockholder had precipitated matters.

Q. Well, you did buy the Laflin & Rand Company by organizing the Delaware Securities Company and having that company take it over, did you not? A. That is correct. 320

Q. And in that way you did acquire a majority of the stock in a good many of these black powder companies that have been mentioned and also in the Eastern Dynamite, did you not? A. Yes.

Q. And your reason for doing so—did you have any other reasons than those which you have mentioned? A. I cannot say that we had excepting that we realized, or thought we did, that the investment in the explosive industry was a good one.

Q. That is, you found yourself owning a part of a large industry and that part which you owned was 60 per cent of your whole property? A. That is correct. 321

Q. And in your judgment at that time was it necessary for the protection of that investment that you already had acquired, these other interests that you did acquire from the Laflin & Rand Company? A. That is difficult to say; whether it was absolutely necessary, but it certainly was very advisable.

Q. Well, now, after you had acquired them, they were taken over by the company you had organized, the E. I. du Pont de Nemours & Company, were they not, the actual stocks? A. Of the Delaware Securities Company you speak of?

Q. Yes. A. Yes.

Q. Now, a little bit later you formed the present

defendant, the E. I. du Pont de Nemours Powder Company, to which eventually was transferred the actual plants and physical assets which were owned by these various corporations with possibly one or two exceptions, is that correct? A. Not all together; the first purchase of E. I. du Pont de Nemours Powder Company was the stocks of the——

Q. I said eventually. A. Eventually the corporations were dissolved, went out of business, and the E. I. du Pont de Nemours Powder Company ac-
823 quired directly all of the property.

Q. But your object in organizing that company which is the present defendant was for the purpose of eventually vesting in it the absolute title to all the plants and have it manufacture all the explosives and have it sell them all, was it not? A. I cannot say that the first idea was that the E. I. du Pont Powder Company should directly own everything, but it was intended it should directly operate them all; actual ownership was not thought of especially.

824 Q. Well, as it worked out you did adopt that plan, transferring everything to the Powder Company? A. We did.

Q. Now, then, will you state what economic advantage there was in changing the situation from an ownership of stock in a lot of these corporations into a corporation which actually, at least operated the plants, and as a matter of fact, did own them? A. It is only a question of more simple management. It is much more easy to operate properties when they are directly owned than through the instrumentality of another corporation.

Q. Prior to that time it had been necessary to keep a separate organization for each of these companies? A. Yes, until the actual time of their dissolution they had their officers and directors and regular meetings.

Q. And separate sets of books and so on? A. Of course, yes.

Q. All of which, I suppose, entailed duplication of work and large expense, is that correct? A. Well, it is quite to a large extent, yes, I think there was an actual duplication of every entry that was written.

Q. Then, as a matter of fact, did that operation result in a great simplification of the management of the business? A. Yes; a very great simplification. 326

Q. And a great saving of money in the management of the business? A. Well, my judgment is yes; I cannot prove that, but it certainly must have.

Q. You were asked to examine some page in one of these books in reference to certain percentages of trade that were there, and I am not sure that you made the matter entirely plain.

Q. Those percentages, that is, it was stated there that the Laflin & Rand Powder Company had some percentage of trade, did that refer in any manner to the trade of the country, Mr. du Pont, as you recollect? A. The figures I have in mind refer to 327 the trade of the Laflin & Rand Powder Company, of the E. I. du Pont de Nemours & Company and the corporations in which they were jointly interested, had no reference to that trade of those corporations in which they were not interested or in which the Laflin & Rand Powder Company was interested alone or the E. I. du Pont de Nemours & Company were interested alone.

Q. In other words, it was a statement of the various proportions as between the Laflin & Rand and du Pont and these other companies? A. Yes; those figures had added 100 per cent——

Q. But they had nothing to do with the total business of the company? A. No.

328 *Pierre S. du Pont—Cross*

Q. Do you remember ever attending any meeting of these other powder men you have mentioned after 1903? A. I have no recollection of the dates of any meetings that I attended.

Q. Well, can you give a date after which you are sure you did not attend any such meeting? A. I could be almost certain that I have not attended any after January 1, 1904.

Q. As I understood you to say you attended three or four previous to that time? A. I did attend that
329 number, yes.

Q. Do you know of any such meeting being held after the 1st of January, 1904, that you did not attend? A. No, I could not place any.

Q. And then in 1908, we will say up to September, or at that date, the situation was, with minor exceptions that the defendant Powder Company actually owned the assets, manufactured the explosives and sold them for all of the plants which it controlled, is that the situation? A. That is correct.

330 Q. All of the sales organizations and any other organizations were simply in reference to all of the property? A. Yes, the sales organization and all the parts of the organization was with the E. I. du Pont de Nemours Powder Company alone.

Q. Could you give me an approximate date when the actual manufacturing of powder was begun by the defendant, the big company, the E. I. du Pont de Nemours Powder Company? A. You mean in its own name?

Q. Yes. A. No, I don't remember the exact date.

Q. Do you know whether these acquisitions by the du Pont interests of the other corporations had been for cash or otherwise? A. May I have that question again?

Q. (Repeated). I refer to this list of subsidiary

corporations in which it held minority interests. A. You are speaking now of the corporation organized in 1899 as prior to 1902?

Q. Yes, that list of minority stocks that was owned by the old du Pont Company which you took over, do you know whether they paid cash for them or how they did? A. I know from the records that they paid cash for some of them, and I might say they must have paid cash for the balance, because they issued no securities of their own in payment for them. 332

Q. Then practically this situation was true after the acquisition by you of the du Pont interests, that is the acquisition by the new company of the Laflin & Rand interests and the consolidation with them with one or two others, the California Company and the E. C. Schultze, those that you have mentioned into the present defendant, into the actual owner of them and actually sold the entire output? A. That is practically it, yes.

Q. That is practically the situation? A. Yes.

Q. When was this appraisal made, Mr. du Pont? A. During the year 1903. 333

Q. Do you know of any other of these corporations besides the Eastern Dynamite Company and the Repona Chemical Company which were originally organized by the du Pont Company and the Laflin & Rand Company? A. The corporations, of which the Eastern Dynamite Company owned the capital stock, were largely incorporated or organized by the du Pont and Laflin & Rand interests.

Q. That is, they had gone into that enterprise practically at the same time, the Laflin & Rand, and the du Pont had, as you understood it, had joined? A. I don't understand that question.

Q. I say the investment made in those corporations by the du Pont and the Laflin & Rand respec-

tively, had been a joint investment, made practically at the same time, as you understand it? A. Yes.

Q. In each instance? A. Yes, in every case.

Q. Can you state what the relationship between yourself and any of these co-partners in the old du Pont de Nemours Company was? A. Yes, Mr. Eugene du Pont, Mr. Alexis I. du Pont, Mr. F. G. du Pont are my father's first cousins; they were
335 brothers, those three. Col. H. A. du Pont was also my father's first cousin. Mr. Arthur I du Pont was my first cousin.

Q. Was your father the du Pont that you mentioned as being one of the pioneers of the dynamite business? A. Yes.

Q. And what relation to you was the founder of the company, E. I. du Pont? A. He was my great grandfather.

Q. Now, Mr. T. C. du Pont also was related by blood to these old co-partners? A. Yes, sir; he is my first cousin, also related in the same way to the
336 co-partners.

Q. Was it the desire of those co-partners that the company should be continued in the same name of "du Pont de Nemours"? A. Yes, it was very much their desire, yes.

Q. As well as your own, when you came into the company? A. Yes.

Q. Was it a valuable name so far as for trade purposes were concerned? A. It was of great value as a trade name.

Q. Had powder been sold under the name of "du Pont Powder" during the entire time of the 100 years? A. Yes, sir; during the entire time from 1802.

Q. Now, do you recall at what time the present method of manufacturing blasting powder, so far

as its present constituent parts are concerned was actually entered into? When was nitrate of soda introduced as the principal constituent in the manufacturing of blasting powder? A. In the year 1858 or thereabouts.

Q. Can you tell what any one of these duPonts had to do with that improvement in that way? A. The duPont Company was the first one that used nitrate of soda in blasting powder. That was really the beginning of the great blasting powder interests. The saltpeter powder, so-called, was very 338
much more expensive than the other and the introduction of the nitrate of soda into the manufacture of blasting powder was really the beginning of that industry and it has been manufactured with that constituent part now for many years.

Q. Was not your father very largely instrumental in that development? A. He was; I think he invented the press, the powder press which was used for pressing powder for the first time.

Q. And did he take out a patent at that time? A. Yes, there is a patent on it.

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Q. Your father is now dead, is he? A. Yes.

Q. When did he die? A. In 1884 he was killed in an accident at one of the plants.

Q. As the result of an explosion of one of the powder factories? A. Yes, sir.

Q. In 1908, what plants did the company have in the State of New Jersey? A. In 1908?

Q. Yes, say September, 1908? A. They had the smokeless powder plant, Carney's Point, the Repona plant at Gibbstown, the Haskell plant at Haskell, the Wayne plant at Wayne, the Forcite plant in the northern part of New Jersey and also the Kenville plant, also in the northern part of New Jersey.

Q. Where is the plant of the International Com-

340 *Pierre S. du Pont—Redirect*

pany located? A. That is also in New Jersey near Parlin.

The Court: Near what?

The Witness: Parlin.

Mr. Button: I think that is all, Mr. duPont—If you will allow me (addressing Mr. Abbott). Mr. Graham suggests that this situation of the International Powder Company is not quite clear.

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Q. Now, as the situation stood, the duPont Company owns no stock directly in the International Smokeless Powder and Chemical Company? A. That is correct; yes.

Q. That is a corporation which has at the present time many outstanding stockholders who are not connected with the duPont interests? A. That is correct; yes.

Q. But the majority of the stock is owned by the duPont International Company, which in turn is controlled by the Powder Company? A. That is correct; yes.

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Re-direct examination by Mr. Abbott:

Q. In regard to the last question just propounded to you, Mr. duPont, are you in a position to give an exact list of the stockholders and the stockholdings of the International Smokeless Powder & Chemical Company? A. No; I suppose that is obtainable; I don't know as I could obtain it.

Q. Could you obtain such a list for us? A. Well, only as a stockholder of the company. It is a New Jersey corporation; I think I could obtain a list in that way.

Q. Will you endeavor to obtain such a list?

Mr. McCarter: What is the reason you ask that?

Mr. Abbott: The reason I ask that is——

Mr. McCarter: You yourself can do that, this is a New Jersey corporation and there is a proper place in New Jersey where that can be secured.

Mr. Abbott: We haven't any right, we are not stockholders of the company.

The Court: What is the purpose of it?

Mr. Abbott: The purpose is, this witness 344
has testified to certain outside stockholders in this company, evidently with a view of showing that the main corporation, the defendant in this case, has control over the affairs of the International Smokeless Powder Company. If that is so, we would like to bring out that fact more definitely and I think that can be done best by getting hold of an official list of the stockholders of the company.

Mr. Button: We have shown that we 345
owned a majority of the stock. The object of the inquiry was to show that that company was a distinct entity with other stockholders.

The Court: That is what I understood.

Mr. Abbott: That is all right. I didn't understand why Counsel made that inquiry after he had shown that this Company had control. But he had some purpose in mind, evidently, and I wanted to get a correct list.

Mr. Button: The purpose was to differentiate it from the other corporations.

Q. What do you understand by the term "control"? Do you mean a stock control of the Powder

Company—that the Powder Company had a stock control of the International Smokeless, the defendants did control it that way? (Objection overruled.) A. I understand the question refers to the meaning of the word "control"?

Q. Yes. A. As I have used it throughout, I mean the control of the majority of the stock of the corporation without reference to the directors or officers or anything of that kind.

347 Q. Now you referred to certain agreements, that you denominated the "Riker and Boies" contract. Are those contracts in writing?

Mr. Button: I didn't understand the witness to refer to any contract.

The Court: I didn't understand so. They were holders of the Laflin & Rand, weren't they?

The Witness: Yes.

The Court: That is what I understood.

Mr. Abbott: And he referred then to "certain interests."

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Q. You referred to "certain interests" which you purchased and known as the "Riker" and "Boies"? A. Yes, their control was in the Laflin & Rand Co.

Q. Were those interests purchased under any agreement to purchase them, or did you go out in the open market and buy them? A. No, they were purchased directly from the owners.

Q. Under an agreement? A. By direct negotiations with them.

Q. Was there an agreement entered into for the properties—to purchase those interests? A. Not as I understand your words. There were direct negotiations with the owners, and they agreed to sell at a price, and we agreed to buy.

Q. Well, then, will you tell——

Mr. Graham: Let him finish.

A. (Continuing) They agreed to sell at a price, and the purchaser agreed to buy, and the transaction was carried out. I don't know that there was any written agreement in regard to the terms. Doubtless it was reduced to writing.

Q. Was there an agreement in writing or was it oral?

The Court: He said it was doubtless in 350 writing.

A. Why doubtless it was so, in writing, but I have no recollection of seeing the document.

Q. You have no recollection of seeing that document? A. Doubtless I have seen it if it existed.

Q. Well, I will ask you then to examine Government's Exhibit No. 234, found on pages 982 and several successive pages of Volume 4 of Petitioner's Exhibit in the case I have called your attention to, and ask you to state whether or not anything there refreshes your memory as to the agreement to pur- 351 chase the stock of those tentatively. (Handing book to witness). A. Well, this agreement which I note was executed——

Mr. Graham: The question is not what the agreement says.

Mr. McCarter: The particular inquiry, as I understand it, Mr. du Pont is this: Whether after reading that you, independently now recall the fact from your own knowledge, apart from anything you find there, that there was a written agreement. That is as I understand the Judge made the ruling yesterday on an inquiry of this kind

as to the refreshing of the witness's memory, is that right?

The Court: Substantially so.

A. No, this does not refresh my memory.

Q. You refer to the fact that the interests which you denominate "the du Pont interests previous to the time when your company acquired them, included certain plants in various parts of the United States, and among those you mentioned the Indiana Powder Company and the Chattanooga Powder Company, did you not? A. Yes they owned certain of those corporations.

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Q. You stated that in some of your answers to the inquiries made to you by Counsel as to certain plants favorably located for the manufacture of powder—didn't you so testify and isn't that correct? A. Yes sir.

Q. Did you have—have you anywhere a list of the plants which were owned by the du Pont interests at the time when you took over those interests and the places where they are located in the United States? A. The plants owned directly?

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Q. Owned or controlled with a majority of the stock interests.

Mr. Button: At what date?

Mr. Abbott: At the time when Mr. du Pont's company—the 1902 company—when that company was organized to take over the du Pont interests.

A. I think I can name them; yes.

Q. Very well? A. I can name those plants now.

Q. Very well, you can just give them and the location. A. The plants owned directly were at Wilmington, Delaware, Carney's Point, New Jer-

sey, Wapwalopen, Pennsylvania, Sycamore, Tennessee. I am not certain whether owned directly by the corporation or not. Then they controlled the stock of the Hazard Powder Company; that is located at Hazardville, Connecticut. The Oriental Powder Mills Plant at—I have forgotten the place in Maine. That company also organized a corporation which had a plant at Fairchance, Pennsylvania, which was controlled indirectly, it being necessary to have a Pennsylvania corporation to hold real estate in Pennsylvania; and the Phoenix Powder Manufacturing Company was also controlled through majority stock ownership I think; it had three plants, one at Belleville, Illinois, one at——

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Q. Will you give the name of the one at Belleville, Illinois—excuse me for interrupting you. A. It was the Phoenix Powder Manufacturing Company's factory at Belleville, Illinois. There is one in New Jersey; the third one was in Ohio, I believe.

Q. What was the name of the Ohio plant? A. I can't recall the name for the moment.

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Q. Can you state where it was located?

Mr. Button: It was at Huntington, West Virginia, wasn't it?

A. It was possibly in West Virginia, it was that district, I can't remember the name of it, it has gone from me.

Mr. Button: Was it Kellogg?

The Witness: Yes; Kellogg was the name.

Mr. Button: Mr. du Pont, didn't you omit the Mooar plant in Iowa?

The Witness: Beg your pardon, I did, that is owned and controlled by the E. I. du Pont Company.

Q. You had no other plants at that time, as I understand it? A. I think that list is correct.

Q. Now after the du Pont interests passed into the hands of your company—— A. Yes.

Q. ——what other plants did you acquire, and if you can name them and their locations, why do so at the present time.

Mr. Button: I don't think you referred to black powder plants exclusively?

359 Mr. Abbott: I am referring to all the plants that you brought out and made inquiry concerning?

Mr. Button: I understand.

Mr. Abbott: In other words (so the witness may understand what I am getting at), counsel drew out from the witness the theory that it was necessary for him to have various plants in various parts of the country for the proper transaction of its business. Now I want to find out for future purposes in this

360 case, exactly where those plants were located, and what their names were. Therefore he has now told us the plants which the du Pont interests controlled that it took over and I would like to know now what the plants that any of the other interests which he afterwards took over, were and where they are located; and I will say if the witness is not able to give that now I won't ask him to do so. I think it is straining his memory very much to ask him to do that from memory.

A. I would prefer to furnish that list later.

Q. Will you kindly give us a statement covering that answer, covering that inquiry? A. Yes.

Q. Will you also cover the answer to the question so as to bring down the location of all the plants which were subsequently acquired by the du Pont Powder Company, after its organization in 1903, and from that time down to September 18, 1908? A. Yes.

Q. With the location of the plant? A. Yes.

Q. I understand you to say that after you took over—after the Powder Company took over the various interests in various corporations, a large number of those corporations were dissolved and 362 their organizations were disintegrated, and everything was consolidated into the hands and under the management of the Powder Company, is that correct? A. That is correct; yes.

Q. Now I show you—are you able to give a list of those names from memory, those corporations? A. That were dissolved?

Q. That were dissolved. A. No; I cannot.

Q. I show you the complaint or declaration in this case, and ask you to look at paragraph 4th, on pages 6, 7 and 8, and examine the matters set 363 forth there and state whether or not this is or is not a correct list of the corporations which were taken over by you and afterwards dissolved. (Handing paper to witness.) (Objection overruled.) A. All those corporations were owned, or the stock of them, indirectly or directly by E. I. du Pont de Nemours Powder Company, and so far as I can judge from the list, I think they all have been dissolved and the assets acquired by the E. I. du Pont de Nemours Powder Company. I would add also that the du Pont interests organized a great many of those corporations themselves for special purposes.

The Court: I didn't get that last.

364 *Pierre S. du Pont—Redirect*

The Witness: Those are not all corporations in which the du Pont Company bought interests. They organized a great many of those corporations themselves for special purposes.

Q. And these corporations had all been operating and conducting some part of the explosive business, had they not and were subsequently dissolved, and all of the business which they had formerly trans-
365 acted was taken over by the Powder Company? A. That is correct.

The Court: That is what he said.

Mr. Abbott: But I wanted to make sure, Your Honor.

Q. Very well. You have stated then that you did not attend any meeting of the association after January, 1904? A. I believe that is correct.

Q. Then, you say you haven't any recollection of attending any meetings of manufacturers of ex-
366 plosives after the year—after January, 1904? A. Yes.

Q. Do you know when the manufacturers of explosives whose meetings you attended previous to 1904 ceased to hold those meetings? A. Well, I cannot state that.

Q. You cannot? A. No.

Q. Now, you referred to the fact that your father had been killed in an explosion in the mills? A. Yes.

Q. Now, you stated that the organization of the previous—that the organizations of these various companies were all eliminated and everything was consolidated into one corporation, and into one name for the question of minimizing the expense

and for conducting the business more economically? A. That is it; correct.

Q. And that applied also to the development business of the various corporations that these various corporations had been engaged in? A. Yes, there is only one development department now. I doubt if there was more than one or two before. I think the Laflin & Rand Company and the duPont Company were the only ones that maintained a very large development system.

Q. You have referred also to the fact that there 368
was a detailed appraisal of the various properties which you acquired at the time those properties were taken over by you. Was that appraisal in writing? A. It was reduced to writing; yes, sir.

Q. By whom was it made, if you know? A. There were two committees who appraised the factories. The black powder committee, I think, of Mr. Charles Patterson, Mr. Frank L. Connable and W. K. du Pont. I am not certain of those names. And the dynamite committee, O. R. Jackson, Irenee A. du Pont and I don't recall who was the 369
third, I think, there was three on each committee.

Q. When was this committee named? A. In the year 1903.

Q. Will you produce that appraisal?

Mr. McCarter: We object to that Your Honor. The inquiry was made which provoked the answer that there had been an appraisal made in 1903, that inquiry was "after your preliminary examination into the assets of this business, did you make any subsequent examination." He said, "Yes, there were two subsequent examinations, one was at "such a time and later in 1903 an appraisal was made. Now I don't think

370 there is anything in that that makes it proper or germane or relevant to bring out what these appraisals amounted to. And again all that I stated yesterday to the Court in regard to the effort and purpose of getting at the values of stock and assets relatively, we conceive to be utterly ungermane and irrelevant to the controversy; and we don't conceive that any inquiry that was made on the cross examination of this
371 witness made proper a departure from that pdinciple, namely, the question whether or not there was an appraisal made or was there an appraisal or was it made by the Pope or by somebody who knew something about the business and no doubt the purpose of the inquiry is——

The Court: The mere fact that a written appraisal appears to have been adopted in making the appraisal of the assets does not allow you to have it produced. What is the
372 purpose of it.

Mr. Abbott: The purpose of the inquiry is, if Your Honor please: That we want to show the methods that this witness and others associated with him in the powder business have used in appraising property which they have acquired for their own purposes; and I will make my purpose clear since Counsel has several times intimated that there was something ulterior about it, for the purpose of showing that these powder manufacturers had a definite way of valuing properties which were based almost altogether upon the earning capacity of those plants, so that we may later on be able to show from authoritative sources and out

of the mouths of these defendants themselves what is the fair and true valuation of our property, when we have reached that point—what was a fair and true valuation.

Now I desire to have the production of this exhibit, of this list for several reasons:

First, because it was matter which was brought out by the defendants themselves. The witness has testified as to some facts and as to some matters which that writing contained, and he has testified that there were other facts in connection with that matter which he is not able to state from his memory; and we desire to have the document itself so that we may have access to any fact which may appear to be pertinent.

Now, I do not wish it understood that we propose to offer any document here and limit it to any specific purpose, unless we do state what that purpose may be. I am stating now the purpose of the inquiry which relates to this particular document, and if it should be admitted, we want it distinctly understood that we may be able to use it for any purpose which may appear to be relevant under the orders of the Court.

The Court: The mere fact that they have taken a certain method of ascertaining the values of properties they took over, would not be evidential on the question of the value of the property you say was destroyed.

Mr. Abbott: It would have this value, if Your Honor please, it would show the methods adopted by the only people who were capable of giving us information upon that point.

The Court: You surely can show it yourself.

376 *Pierre S. du Pont—Redirect*

Mr. Abbott: We might be able to show it if Your Honor please, but then Your Honor will recall that the powder business, the business of explosives in this country is a peculiar business and that is in evidence as already shown without any denial.

The Court: Without prolonging the argument, you are in position to show the peculiarity of the business?

Mr. Abbott: We may be more or less.

377 The Court: At the present time I see no reason why this witness should be required to furnish a written appraisal.

Mr. Abbott: I think we are entitled then to have stricken from the record any reference this witness may have made to the appraisals of the property which are based upon this writing.

The Court: I see no reason for that now. The witness simply says that the appraisals were made more complete upon the second examination in 1903 and was put into writing. The fact that he mentioned that is no reason why this testimony should be stricken out.

378

To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

379

Recross-examination by Mr. Button:

Q. You have been shown a list of companies in this complaint and asked if these companies were dissolved and their assets taken over by the Powder Company. Now is it or is it not true that a number of companies were organized by the du Pont Company itself for the purpose of doing certain portions of business that the du Pont Company then possessed? A. That is correct, and the corporations in which it was interested also organized companies for special purposes.

380

Q. That is in that instance they would be corporations actually organized by yourself and not acquired from any one else and which did not acquire any property from any one else, is that it? A. That is correct.

Witness excused.

ARTHUR J. MOXHAM, a witness produced on behalf of the plaintiff, having been duly affirmed, estified as follows:

381

Direct examination by Mr. Abbott:

Mr. Moxham, where do you reside? A. Wilmington, Delaware.

Q. How long have you resided there? A. Since the fall of 1902.

Q. And what is your occupation? A. I am one of the vice-presidents of the E. I. du Pont de Nemours Powder Company among other things.

Q. When did you become vice-president of the Powder Company? A. Shortly after, if not at once on its organization.

Q. That was in 1903, I believe? A. I think.

Q. When were you elected to the vice-presidency of that association?

Mr. McCarter: He did not say that he was

elected to the vice-presidency of the association, but of the Powder Company.

Mr. Abbott: I want to correct myself as to that.

A. I was elected vice-president of the E. I. du Pont de Nemours Powder Company at the time of its organization.

Q. Now, previous to the organization of the E. I. du Pont de Nemous Powder Company did you
383 hold any office in any of the companies which preceded that company? A. I was president of the Hazard Powder Company.

Q. Do you know anything about the company known as the E. I. du Pont de Nemours & Company? A. In a general way, yes.

Q. Were you an officer of that company? A. I was not.

Q. Were you connected with it as director, on the Board of Directors? A. No.

Q. Do you know of any association of powder
384 manufacturers which obtained or existed previous to and subsequent to the organization of the E. I. du Pont de Nemours Powder Company? A. That there was such an association I know. I do not for the minute remember the name of it.

Q. Did you ever attend any of its meetings? A. I attended the meetings of one association, the one that was in existence at the time that I became president of the Hazard Powder Company.

Q. Can you recall what that association was? A. I cannot.

Q. Do you know what its general purposes were? A. Its general purpose was to exchange information as to the trade of the country and matters allied to the general business of selling powder.

Q. Did any of those matters have any relation to the fixing of prices? A. Yes.

385

Q. Did they have any relation to the allottment of business between the members? A. I think so. My memory is very vague as to the association. It was complicated. I knew nothing of the business when I joined it. It lasted but a very short time. I could not speak confidently about the details of its purposes of its organization.

Q. Do you know anything about the manner in which the business of that organization was carried on—that is, whether by board or what was the executive body, if any, of that organization? A. My recollection is that it consisted of meetings of all the powder men that were interested in the association. I cannot speak as to its particular organization.

386

Q. Do you know anything about a committee called the "Advisory Committee"? A. I know there was such a committee.

Q. Did you ever attend any meetings of that committee? A. I think so, but I am not quite sure.

Q. Do you know anything about a committee called the "Finance Committee"? A. Yes, sir.

387

Q. Did you ever attend any of the meetings of that committee? A. I think so.

Q. Were or were not you a member of that committee? A. I think possibly I was, if I attended the meetings.

Q. Tell us the general purpose and purport of the business of that committee? A. I do not know. I do not remember.

Q. Do you remember at any time making a report or a speech, addressed to the members of the association, or to the members of this committee? A. I remember a so-called speech to the association I have alluded to as being the one that I had either joined or was present at. I think I was a member of it.

388 *Arthur J. Moxham—Direct*

Q. Do you remember when it was that you delivered that report or speech? A. What date?

Q. Well approximately what year was it? A. It must have been the early part of 1903, I take it.

Q. As early as 1903? A. I should think so.

Q. Have you a copy, or have you the original, of the speech which you delivered—or, in the first place, was this speech in writing? A. Typewritten.

389 Q. Have you got the original of that document? A. I have not.

Q. Do you know what has become of it? A. I have not the remotest idea.

Q. Do you know what you did with it after you finished with it? A. I think I gave my copy of it to Mr. R. S. Waddell, if I remember right.

Q. Have you seen the document since? A. No.

Q. Do you know where it is? A. I do not.

Q. I show you Government's Exhibit No. 29 in a volume which is marked United States of America petitioner, vs. E. I. du Pont de Nemours
390 & Company, defendants, and called Petitioner's Record of Exhibits, Vol 1, on page 207, and ask you to examine that page and subsequent pages and state whether or not that is a true and correct copy of that speech as near as you can at this time state. (Handing to witness.) A. I think that is, as well as I can remember the date, a correct copy of the speech that I made at that time.

Q. Have you examined the Exhibits attached to that, 1, 2, 3, 4 and 5? A. I will do it now, but they recall to me almost nothing. They are applicable to the remarks in the speech and by that perhaps they can be—I can state them to be possibly correct, but from my own memory, not otherwise.

(The same offered and objected to; objec-

tion overruled; admitted and marked Plaintiff's Exhibit 22 for identification.)

Q. Now, Mr. Moxham, do you know anything about a system or compilation of rules or regulations known as "the Compendium of Rules"? A. I don't.

Q. Do you know anything about any rules or regulations which governed the proceedings of this association? A. Except in a very general way, no.

Q. I will ask you whether or not there were any 392
rules that were at any time called to your attention regulating the affairs of the Association? A. There may have been the rules, and they might have been called to my attention. To-day I do not remember that it was so.

Q. What do you recall with reference to the rules, if anything? A. I don't know that I can recall anything in reference to rules. I can remember the meeting, perhaps more than one, with the Association. That there was some system, I was perfectly aware. If there were a compendium of 393
rules, I don't think I ever read them though.

Q. At these meetings which you attended, do you recall who was present at any time? A. I can recall some of those present, yes.

Q. Will you name such as you can recall? A. I can remember Mr. Olin.

Q. Whom did Mr. Olin represent? A. I don't know. Mr. Lent.

Q. Do you know whom he represented? A. I think the Austin Powder Company. I can remember Col. Henry duPont. Mr. Haskell.

Q. Whom did Mr. Haskell represent? A. At that time I believe it was Laflin & Rand. I think upon one occasion I remember Mr. T. C. duPont being there. There were a good many others, who,

at the time, were strangers to me who I saw very little of afterwards, besides those that I have named.

Q. Do you recall—do you know Mr. A. O. Fay? A. No.

Q. Did you ever see Mr. Pierre S. du Pont at any of those meetings? A. I don't think so.

Q. Do you have any knowledge of your own at this time, as to who were the various members of the association, and give the names of any of the
395 persons with whom you associated, I mean corporations or associations? A. I don't understand the question.

Q. Can you give the names of any of the Powder Manufacturers, be they corporations or individuals, who were members of this association which you have stated—whose meetings you state you attended? A. I can't.

Q. None of them at all? A. My memory of the association, per se is so vague that I am not in a condition to testify that even those gentlemen I
396 testified of are members. I presume they were.

Q. Now you attended those meetings? A. Yes, sir.

Q. Whom did you represent at those meetings? A. I represented the Hazard Powder Company.

Q. Now, haven't you any knowledge at all as to whom any of the other gentlemen represented? A. Not beyond what I have given you. Mr. Lent of the Austin Powder Company and Mr. Olin I don't remember.

Q. Do you know when that organization went out of existence, or ceased to have meetings? A. I know it was very shortly after I joined, the date I can't give.

Q. By "shortly afterwards" would you indicate whether you mean a year or two years? A. I should think within the year 1903.

Q. You yourself attended no meetings of the association after that period, did you? A. I don't like to tie to exact dates. After the association was dissolved, no.

Q. Now, can you state why the association was dissolved? A. I think that I was very much to blame for that. It was dissolved, because like all so-called pools of that kind, it utterly failed in carrying out the purpose for which it was formed; and I believed that our company would reach far greater success by following the true economical 398 trade laws. They were trying to create artificial ones which could not be lived up to. I spent most of my time in urging, at that period, its dissolution. I think I was largely instrumental in having it dissolved.

Q. The dissolution occurred after the Powder Company had the complete organization? A. As I say, I can't remember the exact date of it. The policy of dissolving it, I, according to my present recollection, was urging before we reached our complete organization. 399

Q. But you didn't finally dissolve it until after? A. That I can't answer.

Q. Well, you state that you attended some of the meetings for about a year after you became an officer of the Powder Company, is that correct?

A. I don't know whether it lasted a year or not. It was within a year that it dissolved, and how much of the year it lasted, I am not prepared to say.

Q. Now, at the time this association was dissolved, at your instance, as you have indicated, had the Powder Company acquired the interest known as the Laflin & Rand interest? A. Don't misunderstand me about this, I was only one factor in its dissolution.

400 Q. You stated it was largely due to your idea? A. Particularly so, largely so, yes. I don't remember whether the Laflin & Rand was part of our organization at that time or not.

Q. Do you know whether the Hazard interest had at that time became a part of your organization? A. The Hazard at that time was an independent organization, all the stock of which was controlled by the du Pont interests.

401 Q. And by du Pont interests, what do I understand you to mean? A. Well, I am ashamed to say I can not tell you; we have so very many companies interlaced with each other, that the exact resting place of that I do not know, whether it was—well, I needn't speculate, I don't know.

Q. Have you any knowledge of your own Mr. Moxham, as to what companies engaged in the manufacture of explosives and were acquired by the du Pont Powder Company, the defendant in this case, immediately after its organization; do you know anything about the details of that matter yourself? A. I know something about the de-
402 tails of the Laflin & Rand, and something about the details of the International—du Pont—International Powder Company, in a very vague way, a very little about a good many others whose names even I didn't remember,—there was something at that time, something somewhere between 100 and 110 different companies, and I, a perfect stranger to the business—they were gone almost before I had learned to remember their names.

Q. By "gone" what did you mean? A. Dissolved; that corporations dissolved.

Q. Now, what was the purpose of dissolving those companies? A. The fact that we could save a very great deal of money by having a plain, simple organization, that we could have a very much more

efficient organization, that there was no earthly reason for the existence of the mere shells of the corporations after de facto all the assets, the mills, the stocks, and everything else had been consolidated into one piece of machinery as being more efficient than the scattered organizations.

Q. Now what was that one piece of machinery? A. I have forgotten the name of the company; we had one company to whom all the assets and all the stocks were turned over, of the subordinate companies which we controlled. 404

Q. Well, was it the E. I. du Pont de Nemours Company, or was it the E. I. du Pont de Nemours Powder Company? A. I am not clear to-day which of the two it was. It was ultimately the E. I. du Pont de Nemours Powder Company.

Q. Yes; well, now, by ultimately—when did that period arrive? A. Well, the dissolution of these companies was a continuous thing covering quite a long period of time, perhaps it may have taken two or three years before they were all finally dissolved, all that we could dissolve. 405

Q. Do you know anything about the company known as the Delaware Securities Company? A. A little, yes; I was president of it.

Q. What was the purpose of that compnay? A. That company was organized, if my memory is right to-day, as a means of paying for the purchase of the Laflin & Rand interests.

Q. And how did you pay for the property which you acquired from the Laflin & Rand? A. We issued bonds, and the bonds—and if my memory is right, a small percentage of the stock—was used to pay for the purchase of the Laflin & Rand Companies, if not in whole, in great part, I think in whole.

Q. What was the capital of the Delaware Securities Company? A. My recollection is that the

bonds were four million dollars; the common stock I am not quite sure of, I think about two million and a half.

Q. How was that paid up? A. That I don't know.

Q. Did you pay cash for the assets which you purchased of the Laflin & Rand? A. That I cannot answer.

Q. Now, do you know anything about the Delaware Investment Company? A. The Delaware In-
407 vestment Company was closely allied in purpose and organization with the Delaware Securities Company. There was some divergence of interests, as to which I am not clear to-day, and the purpose was better served by two companies than one.

Q. Do you know whether or not the Delaware Investment Company secured any property during its existence? A. It did.

Q. And what property was that? A. My recollection is it was the Mossic Powder Company.

Q. Where was that property located? A. Somewhere in Pennsylvania.

408 Q. Did it have a plant or mill—— A. Oh, yes.

Q. ——manufacturing powder? A. Yes.

Q. Was it a large or small concern? A. I don't know.

Q. Do you know anything about the California Investment Company? A. That was a company organized for the purchase of some California interests, just what they were I am not clear.

Q. Do you know what the purposes of acquiring those interests were? A. I know that over there we had a very large interest already in some of the powder works and my recollection is that it was deemed more economic to try and concentrate all of them as we were concentrating all of our other companies, and all of our interests that we

possibly could, and I think that we bought the remaining oustanding interest.

Q. Well now by "we," what do I understand? A. The general du Pont interests, that is about the best definition I can give you; if you want an exact definition I cannot give it to you, sir.

Q. Well, do you include within that term, the E. I. du Pont de Nemours Powder Company? A. I cannot remember whether at that time the E. I. du Pont de Nemours Powder Company was involved in it; I mean as part of the organization, or whether it was later. 410

Q. Well, does the term include the E. I. du Pont de Nemours & Company? A. That I cannot answer.

Q. Well, you use the term "we," and as I understand it you were not an officer of the E. I. du Pont de Nemours & Company, but were an officer of the Hazard Company; now what relation did the Hazard Company sustain with these other companies, so that you felt that also generally included within the term "we"? A. When—the period of the California Investment Company was after the period that I had—no—the Hazard Powder Company assets were put into the du Pont de Nemours Powder Company some little time before the Hazard Company as such was ever dissolved. I was at the time an officer of the E. I. du Pont de Nemours Powder Company, at the time of the California Investment organization, I think the period overlaps. 411

Q. Yes; now, as I understand you, you finally absorbed, that is the E. I. du Pont de Nemours Powder Company finally absorbed and put out of existence, dissolved them, about 100 different corporations, is that true? A. I cannot quite acquiesce in that statement of it; the method of procedure was first of all the E. I. du Pont de Nemours Powder

Company or possibly some other company first of all organized for that purpose——

Q. Yes. A. But ultimately the E. I. du Pont de Nemours Powder Company took over all the assets, plants, stocks on hand, and so on of these various companies and manipulated these various companies as one going concern. Now, the dissolution that I speak of wa smerely the dissolution of the shells of the remaining corporations.

Q. Now, these 100 corporations that you speak
413 of, did they relate back to a period anterior to the time when you came in contact with the du Pont interests in 1902, as you say? A. Almost all of them.

Q. Do you know how far back they related? A. Some of them, very, very far back—no, I don't know how far back.

Q. Well now, by very, very far back, will you indicate to the best of your knowledge about how far back they did run? A. Well, the Hazard Powder Company was a very old concern, forty or fifty years old, I think, I suppose that that, barring the
414 du Pont interests itself, was one of the oldest.

Q. Then when you say 100 companies, you mean companies that were included in the Hazard Powder Company interests, is that right, which had been organized previous to the time when you came in contact with the du Pont interests in 1902? A. In part.

Q. And you include within that term also corporations which were part of the du Pont interests before they became incorporated in 1899, is that correct? A. I do not remember the 1899 corporation, but it means the du Pont interests of a long distance back.

Q. Now, does it also include the interest known as the Laflin & Rand interest as far back as they

were known as such? A. As far—one minute, I don't believe the Laflin & Rand as such has been dissolved yet.

Q. Well, the various corporations that the Powder Company acquired which were known as Laflin & Rand corporations, were included in this list? A. In large part, yes.

Q. Is the Laflin & Rand Powder Company doing business now? A. I do not know.

Q. Is it owned or controlled by the Powder Company, whatever stock stock or interest it may have? 416
A. It was owned, but for some reason or other, according to my present recollection, the organization was kept alive; what that reason was for the minute, I don't know and I am not quite sure of its present status.

Q. Now, you said you knew something about the International Smokeless——

The Court: du Pont-International, I think he said.

417

Q. Yes; du Pont-International? A. Yes.

Q. What was the purpose of the du Pont-International Company? A. The purpose was to purchase a controlling interest in the International-Smokeless and Chemical Powder Company.

Q. Is that corporation still in existence? A. Yes.

Q. The interests which that corporation acquired were not included within this list of 100 companies? A. No.

Q. Now, do you know anything about the Eastern Dynamite Company? A. Only in a general way; that principally antedated my connection with the company.

Q. Was that company one of the companies which you included within the one hundred? A. Yes.

Q. That has been dissolved? A. That is my recollection.

Q. And included in that were the companies which were owned and controlled by the Eastern Dynamite Company, is that correct? A. Yes.

Cross examination by Mr. Button:

Q. I understand what you have stated, Mr. Moxham, that the Hazard Powder Company stock and
419 the du Pont interests has been indefinite as to what is meant by those interests. Do you mean that practically all of it was owned by one of the du Pont corporations, as you understand it? A. I don't remember to-day, Mr. Button, whether it was vested in a corporation or partnership or what it was; I do know that all the stock was owned in some shape or form.

Q. You know also that it is an ownership that had extended back a great many years, do you not? A. Very, very far back in the past.

Q. Now, in reference to this list of 100 or 130
420 corporations which you say were dissolved, and their properties consolidated into the Powder Company, was it not true that many of those corporations were concerns that had been organized by the du Pont Company and didn't have plants, but had been used for various phases of their business? A. A very large number were so.

Q. That is as you expressed it once, the du Pont interests had formed corporations for various purposes? A. I think it is very likely I did use that expression; I do not remember.

Q. Therefore, that 100 or 130 corporations—— A. 110, Mr. Button, was my limit.

Q. 110—I thought you said 130—well, that 110 corporations did not represent 110 independent con-

cerns that had been taken into this organization? A. By no means; no.

Q. And I understand at the present date the situation of the defendant here, the E. I. du Pont de Nemours Powder Company, is that it is a corporation that has title to the various properties that it has purchased and is operating them—or I will confine the question to September, 1908, which is the time in issue——

The Court: September 18th? 422

Q. Yes; September 18, 1908; at that time was it practically the situation that the defendant company owned these various plants which have been purchased and was manufacturing its various brands of explosives and itself selling them to the trade? A. Yes.

Q. When you came into the business in 1902, Mr. Moxham, had you ever had any previous connection with the powder business in any way? A. No.

Q. Was it an entirely new proposition? A. Entirely new. 423

Q. And that is likewise true of two of your principal associates, Mr. P. S. du Pont and Mr. T. C. du Pont? A. It is true of Mr. T. C. du Pont; I think Mr. P. S. du Pont had something to do with powder previous to that time, the manufacturing end of it, if my memory is right.

Q. Do you know whether he had anything to do with the internal affairs of any of these corporations? A. I think not.

Q. He had been engaged, had he not, in some previous years as a chemist in one of the factories? A. Yes.

Q. Outside of that, do you know of any previous connection he had had with the companies? A. I do not know of any.

Q. What was your business in a general way prior to 1902? A. Iron and steel.

Q. You are not familiar with the details of the California Investment Company in all its phases, Mr. Moxham? A. Certainly not in all its phases; I have only a very slight knowledge of it.

Q. And had these 110 corporations been in the condition of shells as you express it for some considerable period prior to the time that they were disorganized—dissolved? A. They had.

Q. And during that period of their being such shells, the du Pont company owned all the stock of each of those corporations practically? A. Yes; and very, very many of them if my memory is right, long before that.

Q. Then, so far as the dissolution of those corporations went it did not at that time represent any change, actual change of the control of any assets? A. It did not even create a ripple in the market in any shape or form.

Redirect examination by Mr. Abbott:

Q. Mr. Moxham, can you name the companies which were part of these 110 companies that did not own separate plants? A. No; I am afraid to venture to give you the names; there were several selling companies pure and simple; I am not sure, but I think there were one or two purchasing companies.

Q. One or two what? A. Purchasing companies.

Q. Oh, yes; well, now, you have said several selling companies and one or two purchasing companies; now, what other companies were there that were not operating? A. That were not operating companies?

Q. Yes; operating or manufacturing companies. A. I understand; I don't know of any, but those three classes.

Q. Those were the several that you mentioned and then these two or three?

Q. Now, have you any means by which you could prepare or submit a list of the 110 companies that you have in mind that you have testified regarding to-day? A. I have no record whatever in my office that would help me. If the powers that be were willing to surrender to me such list I suppose I could produce them. 42

Q. You evidently have in your mind a list of 110 companies. I would like to obtain as definitely as possible the names of those companies, and such of them as were operating companies, such as selling companies and such as had plants and such as didn't have plants, as you yourself have already indicated; will you state how with the least inconvenience you could furnish me such a list? A. I don't know that I can do it at all, but if that list is still in existence and for the minute I don't know where we could search for it; I could only ascertain it in quite a long continued search and inquiry of all our different people. 429

Q. Will you state then what you mean by the word "several" as applied to the companies which you say were operating companies, how many companies do you include in that term? A. I don't know I can give you only a very rough guess to-day; I should think out of a hundred companies there were perhaps not more than 10 or 15, maybe 20 at the outside, operating companies.

Q. Well, the rest were what kind of class? A. All sorts and kinds in selling and purchasing; and some—frankly, I do not know what they were organized for. They were mere names.

Q. Do you know a company by the name of the Forcite Company? A. That was before my day. I know it by name.

Q. Was it one of these one hundred? A. That I do not know. You must remember, Mr. Abbott, I came into this thing absolutely green; right into this mess of an infinite number of combinations, and my memory was never very clear about them.

Q. I am only trying to find out what you have in mind as to those one hundred companies. Now, you say you cannot recall that the Forcite company was one of them? A. No, I do not remember whether the Forcite was one of them or not.

Q. Do you remember whether the Indiana Powder Company was one of them? A. I cannot.

Q. Do you recall whether the Chattanooga Powder Company was one of them? A. I think it was.

Q. Do you recall whether the Oriental Powder Company was one? A. I think it was.

Q. Do you recall whether the Ohio Powder Company was one? A. I think it was.

Q. Do you recall whether the Phoenix Powder Company was one? A. Yes, I think the Phoenix was one of them.

Q. Can you recall whether the Birmingham Powder Company was one? A. Yes.

Q. Can you recall the California Powder Works was one? A. Yes.

Q. And the Judson Powder Company? A. Yes.

Q. And the Vigorite Powder Company? A. I am not sure about that, the Vigorite.

Q. And the Hercules Powder Company? A. Yes. May I qualify that? I think the Hercules was merged into the Eastern Dynamite, was it not after the period I am speaking of? I do not know; I would not state positively about that.

Q. The Eastern Dynamite was one? A. The Eastern Dynamite was one.

Q. The Hazard Company was one? A. Yes.

Q. Now, all the names—all these companies whose names I have indicated to you, were important operating companies and owned plants, did they not? A. I do not remember as to the Vigorite. The others——

Q. Was the Southern Powder Company one of the plants—was it not—owning a plant at one time? A. I do not remember the name. I don't know. 434

Mr. Abbott: That is all.

CHARLES L. PATTERSON, called and sworn as a witness for the Plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Patterson, where do you reside? A. Wilmington, Delaware. 435

Q. What is your business? A. I am Vice President of the—a vice president of the duPont Powder Company.

Q. How long have you been such? A. Since 1907.

Q. What was your occupation prior to that, as far back as 1903? A. I was assistant to Mr. Haskell, who was a vice president.

Q. Previous to 1903, did you have any connection with the powder business? A. High explosives.

Q. With that corporation or company? A. The Repauna Chemical Company.

436 *Charles L. Patterson—Direct*

Q. Where was that located, where was the business carried on? A. Wilmington.

Q. Do you know anything about the company known as the Eastern Dynamite Company? A. Yes, I know something about it; I think I do.

Q. Did you sustain any official relation to that company? A. No.

Q. What business relation, if any, did you have with it previous to 1903? A. With the Eastern Dynamite Company?

437 Q. Yes. A. I worked, as I remember, for the Repauna Chemical Company, which was owned by the Eastern Dynamite Company—controlled by the Eastern Dynamite Company.

Q. After the Repauna Chemical Company was obsorbed by the Eastern Dynamite Company, did you still continue to be employed by the Repauna Chemical Company? A. Yes.

Q. Not by the Eastern Dynamite Company? A. That is my recollection.

Q. After the organization of the Powder Com-

438 pany, the E. I. du Pont de Nemours Powder Company, did you become, immediately, associated with that company? A. No, sir.

Q. How long did you then continue with the Repauna Chemical Company after the organization of the Powder Company? A. Well, I continued as the representative of the high explosives for a year or so after—perhaps a year or two after the organization of the Powder Company, but my work was with high explosives.

Q. You say "representative of the high explosives," whom do you represent? A. I helped Mr. Haskell.

Q. As Mr. Haskell's assistant? A. Yes.

Q. Now, did you have anything to do with a department of the Powder Company known as the

439

Sales Department at any time from 1903 down to 1908? A. Yes, sir.

Q. What position did you sustain at that time with reference to the Sales Department? A. The position that I occupied after, I think 1904, I think my title was "Director of Sales" under Mr. Haskell.

Q. As "Director of Sales" what were your duties? A. Subject to Mr. Haskell's approval, I had —I should say the principal executive officer under Mr. Haskell in the sales department.

440

Q. Well now then, will you describe generally how your duties as principal executive officer affected the trade of the Powder Company throughout the United States? In other words, how far did they extend? Tell us generally, in other words, what your duties were as "Director of Sales?" A. Well, the country was districted into territories, and those territories were in charge of managers.

Q. Now, then, describe how those territories were made out, how the country was districted? A. We had an office in Chicago; a branch office in St. Louis and Birmingham, Alabama; Pittsburgh, New York, Philadelphia, Denver and California, and one in Duluth; and I think one in Holton. I don't know, Mr. Abbott, if I have named every one, if I have not I will be perfectly willing to give it.

441

Q. I wish you would tell the Jury just how the country was districted? You have given us the location of your offices and agencies, and I wish you would say now over what territory each one of those branch offices had jurisdiction? A. Well, I could not tell you that without bringing you a map. I could show you on a map how the country was divided.

Q. Just generally, now, at this time. A. My recollection is that the New York office had charge

of the sales of the New England States, and New York State, and perhaps New Jersey.

Q. Now, did you call that any special district, what was it known by? A. That is known as the New York district.

Q. As the New York district? A. Yes, sir; and so we districted the whole country in that way in charge of managers in branch offices.

Q. Was there what was known as an "Eastern District?" A. In charge of an assistant, I think
443 there was; yes.

Q. Was there what was known as a "Western District?" A. Yes; "Middle West;" "Far West."

Q. Under whose charge, or in charge of what kind of a representative was the Western District, we will say? A. An assistant at Wilmington.

Q. Where was he located. A. At Wilmington.

Q. At Wilmington? A. Yes.

Q. What territory did that Western District cover? A. You mean the "Far West?"

Q. You said it was divided—— A. The "Far"
444 or "Middle West," do you mean?

Q. You say there were two divisions? A. Yes, sir.

Q. What was the territory known as the "Middle West?" A. The territory?

Q. Yes. A. You mean the states?

Q. Yes. A. My recollection is that the "Middle West" district comprised—I am not sure whether they call that the "Middle West" or "Central," but it took in the country from Chicago, the branch office was located in Chicago, one in Chicago and one in St. Louis.

Q. How far west did that territory extend? Will you give me the line of demarcation? A. I could not give it to you accurately, Mr. Abbott.

Q. I am asking now in general. A. To the best of my recollection?

Q. Yes. A. Illinois, Indiana, Iowa—not all of Illinois, Southern Illinois, I think, reported to St. Louis; and I think either all or part of Michigan, but I am not sure about Kentucky, perhaps part of Kentucky.

Q. Now, what was the territory next to that on the western border called? What do you call that? A. My recollection is that we had an office at Kansas City to take care of the trade around the Missouri River, perhaps St. Louis took care of that, I am not clear on it. 446

Q. What did you call that district? A. Well, we called it, whatever the town or city in which the office was located, whether Kansas City or St. Louis; the St. Louis District or Kansas City District.

Q. Now, Denver, what district was that located in? A. That was the Rocky Mountain District.

Q. Was there a territory known at any time as the neutral belt? A. Yes, sir.

Q. What are the boundaries of that territory? A. That embraced Colorado, Arizona and I think Montana, a line north and south. 447

Q. The Rocky Mountain States? A. That is practically my recollection.

Q. The Pacific Coast territory, what did you call that? A. That was territory that was tributary to San Francisco and as far East as—what do you mean now exctly, Mr. Abbott?

Q. I am trying to get at—what I want to get at, at this time is for you to explain and give to the jury an understanding of how your territory was divided into districts between the Atlantic and Pacific coasts—between the Atlantic and Pacific Oceans, so that they may get an understanding of the system which you used in carrying on your Sales Department. A. Yes, sir. Well, I think the

country that reported to San Francisco took in California, and north to Washington, Oregon, Nevada and the Southwestern States, I think.

Q. In your position as director of sales, were you supreme as to making the prices? A. No, sir.

Q. Who had authority over you in that regard? A. Mr. Haskell.

Q. Was he supreme in that matter? A. That is my recollection, he was.

449 Q. Now was there any board or other organization of your Powder Company which had anything to do with making of prices or regulation of prices? A. At what time, Mr. Abbott?

Q. I am asking you now of the Powder Company, from 1903 to 1908, inclusive. A. Yes, we had a sales board.

Q. It was a sales board? A. Yes, sir.

Q. Tell us how that sales board was constituted? A. It was an advisory board whose positions were held by assistants who had charge of these different branch offices.

450 Q. Assistants who had charge of the branch offices? A. Yes, sir; and then we called in some other men in the department who were prominent in different divisions, so that all of the prominent men would have cognizance of what was going on in the different departments.

Q. Now, how many members did the sales board have? A. Well, I could not say, I can not remember that.

Q. Can you tell the minimum number and the maximum number? A. Well, I should say at least six members, and perhaps three or four more.

Q. Tell us what part of that number was made up of department heads? A. Well?

Q. You were one of the members, were you? A. Yes.

Q. What other department head was a member of the Board? A. Well, the assistant who had charge of the Eastern Division was one and the assistant who had charge of the Western Division was one and there were three or four of those assistants.

Q. Now, when a matter of prices was before that Board, what steps were taken to determine any question that might arise on that head; how did you go about it, in other words, to regulate prices 452
to fix prices? A. Well, the request was always put in before the sales board and threshed out very carefully.

Q. By whom was the request made? A. Beg pardon?

Q. From whom did the request come? A. It came from the branch offices, and to the branch offices from the salesmen in charge of the particular piece of trade.

Q. And when it reached your board, what did you do? A. Well, it was thoroughly discussed and passed on by the board, and if it was of importance 453
enough it had to go to Mr. Haskell for approval.

Q. Now did you have anything to do with a board at any time known as the "Advisory Board?" A. No.

Q. Did you know anything about the manner in which the business of the interests which were afterwards consolidated into the Powder Company were carried on? A. Well, now, Mr. Abbott, won't you please tell me which interests you mean?

Q. I am assuming that the business of the various interests which were afterwards absorbed by the Powder Company were conducted according to some general rule. I am trying to find out if you know anything about what that general rule was? A. You mean when it all came into du Pont?

Q. No, previous to that. A. No, I have no recollection.

Y. You weren't connected in any way with the sales board or the Advisory Board previous to 1903? A. No.

Q. Did the sales board at any time ever fix or issue a general price list of explosives? A. At any time?

Q. Yes; during from 1903 to 1908. A. Yes.

Q. Do you know when the first price list was
455 fixed? A. On black powder?

Q. Well, I asked you in regard to explosives. A. My recollection is that they did issue a price list, a schedule of prices, in 1907.

Q. Now that was the first price list then that was issued? A. My recollection is that.

Q. Did you have anything to do with making up and preparing that price list? A. Yes.

Q. When was the next price list prepared? A. I think the first price list was followed by another one the same year.

Q. In 1907? A. Yes, sir.

456 Q. And when was the next price list? A. We had two price lists—my recollection is, that followed, one on black powder and one on dynamite; that is to say, three, my recollection is that year. I may be wrong about that, but if I am, I can give it to you, Mr. Abbott, copies of it.

Q. Beg pardon. A. I say I can furnish copies of those schedules if I am wrong.

Q. Then I will ask you if you will furnish all the prices that were made while you were a member of the Board between 1903 and 1908? A. Schedule price lists published—yes we have those.

Q. Very well then, you will furnish me with copies? A. Yes, sir.

Q. Now you said something about a map that you

had in mind which would show the districting of the territory in the United States. Is such a map in existence? A. I don't know as to that, but I would not like to say. I could not answer your question, you know, Mr. Abbott, accurately unless I had the map here, in the event we have one, and figure it out yourself.

Q. Well, have you in your office or accessible a map that shows how the country was districted during the years 1903 to 1908, inclusive, for the purposes of trade? A. If we have not one, I think I can make one. 458

Q. Well, I will ask you to do that then, if you will, and present that? A. From 1903 to 1908? Well, Mr. Abbott, could I have a memorandum giving me just what you want, so I won't overlook them when I go home?

Q. Assuredly. I will be glad to furnish you the information. A. Because I have not that memorandum myself.

Q. Now, did you have any lists known as "accounts of sales"? A. From agents, do you mean? 459

Q. Well, you have a definite document, have you not in your office called "accounts of sales," a series of documents, in which you keep a record of your sales? A. Yes, sir; do you mean the daily sales?

Q. Well, I am only asking you now for a definite term, the term which covers the accounts of sales. Do you know of any such documents that are known generally accounts of sales? A. I don't recall.

Q. How do you keep the records of the sales which you make, the prices, the parties to whom you make the sales, and so on? A. Well, we get this from the branch offices, the sales that they make are sent in daily or, every day or two.

Q. Well, now, what were these reports that are made, giving you an account of the sales? What

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are they called in your office? A. "Sales accounts"; daily sales accounts.

Q. Then that is what they are called, "sales accounts" and not "accounts of sales"? A. I should say so.

Q. Now those sales accounts show what? A. They show the transactions of the branch offices as they occur.

Q. Do they show the prices? A. Yes, sir.

461 Q. And are they transferred to any permanent record when they reach your office, or are they simply filed away? A. They are filed away. I may not be sure of that.

Q. Who has charge of those files? A. I think they are charged to the accounting department. I would not be sure whether we keep the copy of it or not, but Mr. Corne can tell you that.

Q. Did the prices which were indicated or shown upon these price lists, which you state were issued from time to time—were they always observed, or were they from time to time deviated from? A. The schedules, do you mean?

462 Q. Yes. A. I think they were deviated from. That is my recollection.

Q. Generally speaking. What was the reason for any deviation from the figures or prices—the general prices—which were shown upon your price lists? A. I should say it was competition.

Q. To meet competition? A. Do you mean the lowering of our prices?

Q. Yes. A. I should say when we had to do it. It was competition, yes.

Q. By "comeptition" you mean when some person was endeavoring to get a particular customer, you made a lower price in order to obtain the business of the customer? (Objection sustained.)

Q. What was meant by the term "competition"

as you have just now used it? A. Well, I understand that competition means that other powder companies make a drive for trade, making a lower price, and to meet it, I call that competition, the lower price then that we made.

Q. Did you ever make a lower price first A. I think not, Mr. Abbott; not knowingly.

Q. Not knowingly? A. No, sir.

Q. Now, did you ever endeavor to find out what the other prices were that were made by any competitor? A. Yes, sir. 464

Q. How did you proceed to find that out? A. We get exhaustive information, we think, from the branch offices.

Q. Now, what is the nature of that information? A. Well we get it through the trade reports and letters.

Q. That is contained in your trade reports? A. A great deal of it.

Q. What methods do you take to acquire that information? A. Our branch office managers are positively instructed that they must use every 465 means in their power to get information and give it to us along those lines.

Q. Now, do you know anything about the means that are used from time to time for that purpose? A. Only as I have explained to you.

Q. Beg pardon. A. Only as I have explained to you.

Q. Now, as to the means which you used from time to time, and particularly those which you used during the years 1903 to 1908, I would like you to specify all the details, all the means within your knowledge that have been employed by your agents to get the information which you say they are urgently instructed to get. (Objection sustained.)

Q. Well now, Mr. Patterson state in detail the

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means which you instructed your agents and other representatives to use in obtaining any information with reference to a competitor's business so that he might know what prices to make with regard to its particular trade. A. The means that we have conveyed to our minds the necessity of making a different price from that which was in effect was suggested through trade reports and letters.

467 The Court: That is, what came to you?
The Witness: That is what came to me.

Q. Now, what instructions did you give through which these reports were to be made? What eminated from you? What did you send out to your agents in the way of instructions, how do you proceed? A. As to making a certain sale? I do not quite catch what you mean.

The Court: In general you mean.
Mr. Abbott: I do not know how I can
468 make the question any more definite.
The Court: Well, suppose you read the question.
(Question repeated by Stenographer).

A. We told them to go and see the customer and visit them frequently, and get all the information he could as to the conditions, those were the instructions.

Q. Did you tell them anything about the methods that they were to use in connection with any particular customer and the particular steps that they were to take in order to find out this information which you wanted to get? A. I have no recollection of giving them any specific instructions as to any particular customer.

Q. Now, I will ask you to state whether you, of you own knowledge know of any methods which were adopted by any of your representatives in order to obtain the information which you insisted they should obtain for you? A. I have no recollertion.

Q. I will ask you, Mr. Patterson whether you received reports from your agents, stating what they did in response to the orders which you gave them to get this information? A. Well, I think they all came in the regular order or in the regular 470 course of business.

Q. Yes, well now tell us what was the regular course of business? A. The regular course of business was we got this data from the trade reports and then we instructed the agents what to do, or what not to do.

Q. Where are those letters and reports now? A. Oh, I couldn't say.

Q. Where do they go after they are received? A. Oh, they are in the files in Wilmington, I take it.

Q. Did you ever adopt any means for checking 471 up the reports made to you by your agents to see whether or not they had done all that you had instructed them to do, so as to obtain the information you desire? A. I have no recollection of that.

Q. Were any letters written at any time calling attention to the fact that enough had not been done in order to obtain certain information and you wished them to take certain other steps? A. I have no recollection of that.

Q. You have no recollection of that. Now, I will ask you whether or not there were at various times during 1903 to 1908 inclusive certain districts which you called "disturbed districts" and certain other districts which were "undisturbed," you remember such a designation as that? A. My

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recollection is the whole country was disturbed pretty much, Mr. Abbott.

Q. Well, were there certain districts which you designated as "disturbed districts," not merely what the whole country might have been, but I want to know what you so designated?

The Court: Your classification of the districts——

473 A. I don't know.

Q. Did you ever hear the term "disturbed districts" used in connection with your business? A. No, I never heard that term.

Q. Were there certain districts in which competition was more keen than in other districts? A. Yes.

Q. Were there certain districts in which you had no competition at all? A. I think we had competition in every district.

Q. Will you state what your competition from
474 1903 to 1908 was in the Eastern Districts? A. Well, there was a good deal of competition in the Eastern districts.

Q. Well, that is what I want you to tell A. A good deal.

Q. Who were your competitors at that time? A. 1903 to 1908?

Q. Yes. A. Well, there was the Black Powder—the Burton Powder Company——

Q. Where was the Burton Powder Company located? A. In Pittsburg.

A. The Burton Powder Company's location is in Pittsburg; and there was the Standard Powder Company, I think their location was in Pittsburg, and there was a Powder Company at Fairchance, I don't know when they did blow up, but I think at

that time they were located in Fairchance, from 1903 to 1908, I won't be positive, but I think so; and then there was the Senior Powder Company in Ohio, they came to that country, and there were a number of small competitive mills in the anthracite district, Pennsylvania.

Q. Is that all? A. That is all I remember now; there may have been one or two others.

Q. Well, I didn't want to interrupt you, but I would like to have you now designate where those various plants were located. A. Well, I could tell 476
better—I am more familiar with the location of their main offices. I don't think I could tell exactly the towns that they are located in.

Q. Well, tell us where the main offices were located? A. Well, I did do that. The Burton Powder Company's main office is in Pittsburg; is there still.

Q. You have answered as to two. I didn't want to interrupt you because I was told not to; but you did name some companies that you didn"t say where their plants were located, nor where their 477
offices were located. A. I think the plant at Fairchance—I think their headquarters, if they were in existence at that time, I think they were, must have been Fairchance, and the Senior Powder Company's office was in Cincinnati.

Q. Now, during the years 1903 to 1908, inclusive, did you make any change in your regular prices in what is known as the Eastern District? A. Yes, sir.

Q. What particular district was it, or what particular location was it that you made change in your prices from your schedule? A. My recollection is that the prices all through the East practically—unless in the anthracite district were not included in the change.

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Q. In the anthracite district? A. No, unless that might be excepted, I won't be sure of it, but other than that, my recollection is they were all changed.

Q. Now, was there a district in Pennsylvania known as the "disturbed district," or as a district where there was keen competition? A. There was keen competition; I don't recall the name "disturbed."

479 Q. Wasn't there a district in Pennsylvania known as a very keen competitive district for a time? A. Well, it was.

Q. Do you know a concern known as the Rockdale Powder Company? A. I know of them; yes.

Q. Didn't you have a keen competitive contest with that company? A. Well, they were competitors.

Q. Well, I am asking you if it was not a keen competitive contest? A. Well, I think they might be called keen, yes.

Q. Well, now, as a matter of fact, did the Rock-
480 dale Powder Company continue to do business after that contest was ended? A. I don't know when they did quit; I don't know.

Q. Well, did the Rockdale Powder Company continue to do business? A. No; they quit business.

Q. They quit business? A. Yes.

Q. Now, do you remember anything about a conversation that you had with Mr. W. I. Koller, who was one of the officers of the Rockdale Powder Company, in the presence of Mr. Haskell, concerning the competitive contest that was then going on between yourselves and that company? A. Only in a general way. I don't remember the——

Q. Well, do you remember a conversation between Mr. Koller, Mr. Haskell and yourself with reference to the competition in which you were en-

gaged with the Rockdale Powder Company? A. I remember being at a meeting in Mr. Haskell's office at which Mr. Koller was present.

Q. What was that meeting for, if you recall?

Mr. McCarter: I suppose what transpired is the point, Your Honor; not what it was for.

Mr. Abbott: Yes. Mr. Haskell—I think the record discloses that sufficiently—was one of the principal officers of the defendant. 482

The Court: What was Mr. Haskell's position?

The Witness: Vice President.

The Court: I will allow the question.

Q. What took place at this conversation or meeting? A. Well, I have no clear recollection of the conversation, Mr. Abbott; it was a long time ago and I took very little part.

Q. When was it? You say it was a long time ago. What year was it? A. Well, I don't remember that. 483

Q. Do you remeber who else was present at that meeting besides you three gentlemen? A. I think Mr. Macabee and Mr. Bloom.

Q. Who was Mr. Macabee? A. Well, I believe Mr. Macabee was the representative of his company, known as the Standard.

Q. The Standard Company? A. I think so.

Q. And who was Mr. Bloom? A. Mr. Bloom represents the Keystone interests.

Q. This Standard Company which you refer to was one of the companies you spoke of a while ago as you having been in competition with, is that correct? A. Yes, sir.

Q. Was the Keystone Company one of the companies you were in competition with? A. That was a dynamite company.

Q. That was dynamite? A. Yes, sir.

Q. Can you recall at this time anything that was said at that meeting at all? (Objection overruled.) A. I don't recall specifically, Mr. Abbott, exactly what did happen.

Q. Can't you state generally, if you can't remember specifically; can't you state generally what was said at that meeting? A. No, I have no clear recollection just what was said.

485 Q. Do you remember anything about whether the meeting was arranged beforehand? A. Yes, sir.

Q. Do you remember who it was that asked for the meeting? A. No, sir.

Q. Who requested it? A. No, sir; I don't remember that.

Q. Who was the arrangement made with, then; was it made with you? A. No, sir.

Q. Who was it made with, you said it was arranged? A. My recollection is, there was a letter from one of these gentlemen, or someone representing the Association, the Powder Association, sent to

486 Mr. Haskell.

Q. Yes. A. I mean, Mr. du Pont—Mr. T. C. du Pont; this is my recollection, and he forwarded the letter, as I remember it, to Mr. Haskell for his attention.

Q. Where is that letter at the present time? A. I do not know.

Q. Did you ever see the letter? A. I don't remember.

Q. What was done with it after it was received at that time? A. I don't know.

Q. About what date was the letter? A. I don't recall.

Q. What is the year? A. I don't remember.

Q. Was its hortly before this meeting was held? A. I think so.

Q. Are you able to recall what year that was? A. No; I am not.

Q. You are not? A. No, sir.

Q. Do you remember who was the principal spokesman for that meeting on behalf of the other interests, not represented by yourself and Mr. Haskell? A. No; I don't remember.

Q. Do you remember who was the principal spokesman of the interests represented by yourself and Mr. Haskell? A. Mr. Haskell.

Q. Do you remember whether anything was said 488
at that meeting in reference to the pending contest between the Keystone Powder Company, the Standard Powder Company and the Rockdale Powder Company on the one hand, and the interests which you represented on the other. (Objection overruled.) A. No, I don't.

Q. Do you recall whether any effort was made at that meeting, by the interests which were represented, by the other gentlemen besides yourself and Mr. Haskll, towards a termination of that contest? (Objection overruled.) A. No, I don't 489
remember.

Q. Now, I will ask you whether at this meeting —I will endeavor to refresh your memory and ask you whether or not you cannot recall, after I have stated to you what I will state—whether Mr. Koller, as representing those interests which were in opposition to the interests which you represented, did not propose to you at that time some arrangement, whereby the keen contest which was then in progress could not be terminated so that both parties might live and make a fair profit on their business? (Objection overruled.) A. I don't recall at present.

Q. I will ask you whether at that time Mr. Haskell did not reply to that request that he was satisfied with the way in which the matter stood,

and that he did not desire to make any arrangement of any kind whatever, or words to that effect? (Objection overruled.) A. I don't remember that.

Q. Now, I will ask you whether, as a matter of fact, that contest did not continue for some time after that, and whether as a matter of fact the Rockdale Powder Company was compelled to retire from business and did retire from business as a result of that contest.

491 Mr. McCarter: I object to that.

The Court: Strike out "was compelled."

Mr. Abbott: Strike out the words "was compelled."

A. My impression is that is so.

Q. Now, I will ask you to state whether or not at this conversation Mr. Haskell did not state to Mr. Koller that this was a question of the survival of the fittest, and that the contest would be continued, is that correct? (Objection overruled.)

492 A. My impression is that some such words as those were used by Mr. Haskell; I would not say that those were the words, Mr. Abbott.

Q. If you can't recall whether those were the exact words that were used, will you state as near as you can what words were used of the same import? A. You mean the interpretation of Mr. Haskell's meaning?

No, I don't ask for any interpretation of his meaning, you said you didn't know whether those were the exact words he used. I wish you would state as near as you can the exact words he used? A. I can't remember.

Q. You can't remember? A. No, sir.

Q. While you were in connection with the Sales Department, during the years 1903 to 1908, I will

ask you whether you know if the price was made on powder—on black blasting powder during the years 1905 and 1906 of 95 cents—a general price of 95 cents to the trade in what is known as the Illinois, Missouri and Indiana district, that territory in that neighborhood. (Objection overruled.) A. I would have to look up the records, Mr. Abbott, before I could state definitely as to that. My recollection is that there was such a price in part of that district, of 95 cents during part of the period, but I could not say definitely which of the years. 494

Q. As I understood you a while ago, your first regular price list was in 1907? A. That is right.

Q. Now, this price I am asking you about was a price which was made in 1905 or in 1906? A. Prior to 1907.

Q. Prior to 1907? A. Yes.

Q. Can you recall any more definitely at this time about when that price was made which you have indicated? A. The length of the time—the duration of that price, you mean? 495

Q. First I would like to get you to state when it was that the price was first made? A. No.

Q. Can you recall when it was that the price was withdrawn, if it was withdrawn? A. I think it was when we got up a new schedule, that is my impression.

Q. That would be in 1907? A. That is my impression.

Q. Before you had this formal pricel ist which you said that you have—that you made in 1907, as far back as 1903, did you have any fixed or definite plan upon which you regulated your prices, this sales board? A. Yes, sir.

Q. Now, describe as near as you can how or what that plan was? A. There were two governing

factors: A fair return, if we could get it, on the money we had in the business; and of course we always were anxious to hold certain customers that we had for a number of years; but the matter was given very careful consideration indeed and every effort bent not to sell anything below cost, if we knew it.

The Court: Not below what?

The Witness: Cost.

497 The Court: Cost and what else?

The Witness: Or below other people, we never wanted to do that, if we knew it.

Q. When you first made up your price, for instance, on the cost of black blasting powder, how did you arrive at what was cost, and a fair price above that for the purposes that you have indicated? How did you determine what was a fair price for your powder, for your black blasting powder? A. Competition ruled the prices very largely about that time.

498 Q. Well, your price—as I understand it, (assuming there was no competition), you would want to have cost and something in addition to that? That would be a fair profit? A. Yes, sir.

Q. What did you call a fair profit in addition to cost? A. Well, we figured the mill cost, always, and the overhead expenses, of selling and administrating, put that all in.

Q. Yes? A. And then figured on a fair profit for the money we had invested in the business.

Q. What would that fair profit be? A. Ten or twelve or fifteen per cent.

Q. How much would that amount to, per keg, twenty-five pound keg of black blasting powder? A. Well it would vary at different times, you know, the cost would vary.

Q. I am asking you now, not what your price was, but what you considered would be a fair profit per keg on your black blasting powder, over and above the original cost, together with the overhead expenses which you have named? A. Cents per keg?

Q. Yes. A. I should say ten or fifteen cents per keg.

Q. That would give you your profit? A. Net profit.

500

Q. Net profit? A. Yes.

Q. Without including freight? A. That is net.

Q. Does making up the cost of the powder—did that include the freight, did you deliver your powder? A. Yes, that was all considered, yes, sir; when we figured on the basis that you are asking me now, how much we expected to get a keg.

Q. Yes. Well now then, in making these prices in 1903, can you recall at this time what was the price of black blasting powder in 1903? A. No, sir; I can't.

Q. Did it vary in the different districts? A. I might say it did, but I don't remember.

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Q. Do you know what it was in 1904? A. No, sir.

Q. In 1905 and 1906, you think in the Middle West, you made this price of 95 cents? A. I think there was a time, during that time you mention, that the price that powder was sold at was 95 cents.

Q. Do you know anything about a company known as the Buckeye Powder Company? A. Only —I only know the company, that there was such a company formed.

Q. Do you know when that company began business? A. I think in 1903.

Q. Do you know how long it continued in business? A. I think until 1908, I am not positive.

Q. During this time, do you know anything about the territory or district in which the Buckeye Powder Company conducted its business? A. Yes; as relates to my business I do, the territory.

Q. What territory, what particular district was it that the Buckeye Powder Company carried on business, so far as you know? A. Well they carried on—they sold powder in a number of our
503 different districts, my recollection is.

Q. Name them. A. My recollection is they sold powder in the Chicago district; and in the St. Louis district; and I think they went as far as Montana, which would be in our Denver district; that is my recollection; and possibly went East to our Cincinnati, Ohio district, and possibly West Virginia, our Huntington district.

Q. Now this 95 cent price made on powder in 1905 and 1906—what district did that cover, and what district did it relate to? A. Mostly to the Chicago district, I think, Mr. Abbott.

504 Q. Mostly to the Chicago district? A. That is my impression.

Q. That is the district within which the Buckeye Powder Company was operating, is that correct? A. No; I think I will have to correct that, I think we did not get any higher net in our Pittsburg district than we did in our Chicago district, that is my recollection.

Q. What territory specifically do you include in the term "Pittsburg district," as you are now using it? A. The Pittsburg district comprises, according to my recollection, comprises Pennsylvania, West Virginia, and I think part or all of Ohio.

Q. What was the price of black blasting powder in the district which you described awhile ago as

being within the New York territory where your branches were? A. We sold very little black powder in that district.

Q. What was the price of powder in that district? A. I don't recall.

Q. What was the price of powder in your southern district, during that same period, the district in the southern states, you didn't describe that this morning but evidently you had a district there. Well, did you have a district known as a southern district? A. Yes, we had; yes. 506

Q. Well, can you tell what the price of powder was at the same time that this ninety-five cent rate was prevailing in the southern district? A. I don't recall at the present time.

Q. Can you tell what it was in the Kansas District? A. The prices got very low in the Kansas District.

Q. Can you tell what it was in the Denver District? A. No; I don't recall.

Q. Can you tell what it was in the Pacific coast district? A. No. 507

Q. Where would that information be in your office if it exists, in whose control? A. I should think in mine.

Q. Are you able to ascertain from your records the prices that prevailed in each of the districts which I have enumerated to you at each period during the years 1903 to 1908 inclusive. A. Am I in position to get it, you say?

Q. Yes. A. I think so.

Q. Will you do that? A. If I am so instructed.

Q. Well I ask you to do it. A. If the Court——

The Court: I see no objection to it; yes.

Witness: Now you won't forget to give me memoranda of this.

508 *Charles L. Patterson—Direct*

The Court: Oh, yes, counsel must furnish you with the data that he wants.

Mr. Abbott: Most assuredly, I assume that counsel on the other side have access to this same record that we have, but if they wish us to put it in definite form we will be very glad to do it.

Witness: When we talked about ninety-five cents my impression is—when we get this data it will show it—ninety-five cents
509 at the mill in that territory. Now I think that that is right, but when we get this data that will show that.

Q. Then this statement that you are going to furnish us will cover the entire territory in which you sold black blasting powder, showing the various prices that were made in each one of those districts including the distracts where the ninety-five cent rate prevailed? A. Yes.

Q. In regard to the ninety-five cent price, I will ask you to show, if you cannot now state from your
510 own recollection how long that price prevailed, when it was first made and when it was discontinued.

A. I will try to get it, I don't remember.

Q. I will ask you to state whether or not any authority was given to any of your agents at any time to exercise their own judgment as to prices. In other words, were they always restricted to the price that you fixed, the general price which you fixed, or did they under certain conditions have a right to use their own judgment as to the prices they would make? A. My recollection is they hadn't such authority.

Q. There never was a period when they could

exercise their own judgment? A. That is my recollection.

Q. They always had to make inquiry of headquarters. Will you state who was the agent in charge of the Chicago office during the years 1903 to 1908? A. I think Mr. Rice.

Q. What were his initials? A. E. C. Rice. He was agent, I think, at that time, in the early period.

Q. Who succeeded him? A. Mr. Oliver.

Q. How long did Mr. Oliver continue in the job? A. I don't recollect—George F. Oliver—I don't remember. 512

Q. Did Mr. Oliver continue as long as 1908? A. No, sir; I think not.

Q. Who succeeded him? A. I think our present agent succeeded Mr. Oliver, Mr. Bumstead, that is my recollection.

Q. Do you know where Mr. Rice is at the present time? A. No, sir.

Q. Is Mr. Oliver living or dead? A. Dead.

Q. Mr. Bumstead—— A. Still our agent.

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Cross examination by Mr. Button:

Q. You have described somewhat the sales organization consisting of these divisions and branch offices. Now, that is simply the organization of the du Pont Powder Company, is it not, Mr. Patterson? A. Yes, sir.

Q. That is not an organization that takes in the representatives of the agents of any other powder company? A. No, sir.

Q. In any regard? A. No, sir.

Q. Nor is it an organization that consults with the sales representatives or other representatives of any other company? A. That is right.

Q. In other words, it is the internal sales depart-

ment of this defendant, the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. Yes; having relation only to the sale of its own goods?

Mr. Abbott: I want to inquire whether counsel is asking now about the present form or merely——

Mr. Button: I am asking about the form during the entire period from 1903 to 1908,

515 which I understand is the period in question and the only one concerning which you have testified.

The Court (to the witness): That is the way you understand it?

Witness: Yes; I didn't have any authority in black powder matters until 1904.

Q. Well, then, we will confine it from 1904 to 1908. That is the condition you found there when you went into the sales department, is it? (No answer.)

516 Q. Now, then, as I understand it, there is at the head of that sales department a director of sales, who at that time was Mr. Haskell and whose position you have since stated, is that correct? A. Yes. I had that position until nineteen—Mr. Coyne is sales director.

Q. When did you quit as director of sales? A. 1907.

Q. So Mr. Coyne came in during the last year of this period you are speaking about, did he? A. Yes; that is right.

Q. Well, now, then, under this director of sales, you had what was called the sales board, as I understand it, that consisted of various employees of the du Pont company who were familiar with conditions in various districts of the country, is that

not correct? A. Yes, sir; the important employees of the sales department.

Q. And they simply got together as a board to adjust trade conditions, what prices you ought to charge for explosives and matters of a kindred substance, is that correct? A. Yes.

Q. And the director of sales had power either to adopt their recommendations or do as he pleased? A. Subject to Mr. Haskell's approval.

Q. Certainly; well, now, then, the actual sale of the powder in the field, as I understand it, was 518 continued under the jurisdiction of various general agencies or branch offices, of which there were some 12 or 15 possibly? A. Yes.

Q. And at the head of each of those offices there was a manager? A. A manager.

Q. You have, I believe, stated the locations of quite a number of those offices. Now, when it comes to these divisions of the company, is it not true that, we will say the Eastern division and the central division and the Western division, those are simply certain groups of these branch offices and the 519 territory attached to them, are they not? A. Yes.

Q. And at the head of each of those divisions there were an assistant director of sales or some other officer of that sort, was there not? A. That is right.

Q. That is, he was an intermediary between the director of sales and the managers of these respectie offices? A. Yes.

Q. Now, there were three divisions, were there not, the Eastern, the Central and the Western, at one time, and later another division added called the mountain division, isn't that correct? A. That is my recollection.

Q. Now, at any time during this period was there any division of groups of branch sales offices called the neutral belt division? A. No, sir.

Q. Now, each of these managers of the branch offices, I suppose, had travelling salesmen, did he not? A. Yes.

Q. And they were the people who travelled the country and scoured the country and came into actual contact ordinarily with the consumer who bought the powder, is that correct? A. Correct.

Q. Now, could you tell in the aggregate how many travelling salesmen there were during this period, just in a general way? A. I could get it,
521 but it would go into a large number, I should say, off-hand.

Q. And they are the people who gathered this information that eventually finds its way to this trade bureau, are they not? A. I think we have over 500 people connected with the sales department now.

Q. That is, these salesmen are instructed to visit all the consumers of powder in their respective territories so far as they know, are they not? A. Yes.

Q. For the purpose of endeavoring to sell explosives to those consumers? A. Yes.

522 Q. And they are also instructed to keep watch of the progress of construction work, the opening of new mines, etc.? A. Yes.

Q. And the development of any operations which may require the consumption of explosives? A. Yes.

Q. And having gathered that information, as I understand it, they are required to make a written report of it and send it into Wilmington? A. Yes.

Q. And is that the general nature of the information concerning which you were questioned? A. Yes.

Q. On your direct examination which is contained in these trade reports? A. Yes.

Q. I suppose that they are also requested to report all they find out as to the kind of powder a

particular man is using at that time, are they not? A. Yes.

Q. Whether it is du Pont powder or Buckeye powder or any other powder? A. Yes.

Q. Now, isn't that about the extent of the instructions that are given to those agents, Mr. Patterson? A. That is about the extent of it.

Q. To report on all conditions surrounding the trade in explosives? A. Yes.

Q. And I take it those reports are very numerous on account of the large number of salesmen, are 524 they not? A. Yes; very numerous.

Q. And are these salesmen instructed to frequently visit the consumers of powder in their respective districts? A. They are expected to visit at certain periods certain trade and to make reports.

Q. The trade in black blasting powder is more or less fixed in this way, is it not: Take in the mining districts it is perfectly well understood by them what mines consume powder, is it not, that is a matter of easy knowledge, isn't it? A. Yes.

Q. So that the customers as a general thing, they are expected to visit, are pretty well known, is that 525 correct? A. I should say so.

Q. Now you have been asked about the amount of competition during this period in these various districts which have been mentioned. To begin with I will ask you in a general way from your knowledge of the conditions, whether the competition in all lines, well in black blasting powder, I will say, has increased or decreased during the period which you have mentioned? A. Increased.

Q. Well, to what extent in a general way? A. Well in that period I think there were five large mills built in that field.

Q. Mills with which the du Pont companies' interests had nothing to do? A. Yes.

Q. Is that correct? A. Yes.

Q. And take the high explosive field, the dynamite business, did the competition largely increase during that period in that business? A. That is my recollection.

Q. Now you mentioned one or two companies; take the black powder companies, during this period do you remember that there was a black powder company known as the Black Diamond Powder Company that was competing for business,
527 a new company? A. In what field, you say; did you mention the field?

Q. No, I didn't. A. Well my recollection is there was a Black Diamond Company.

Q. Was that a company you had anything to do with? A. No.

Q. It was out after business, was it? A. Yes.

Q. Do you remember the Burton Powder Company, about when it was organized? A. No, sir, I don't exactly.

Q. That dealt in black powder, did it not? A.
528 First yes, and then dynamite.

Q. Where was it located? A. The main office is in Pittsburgh.

Q. Did they sell powder up through this territory that the Buckeye Powder Company was selling in? A. I think latterly they did; I won't be sure about that period.

Q. Now the Egyptian Powder Company was located where? A. The Egyptian Powder Company in Illinois.

Q. Was that a black powder company? A. Yes.

Q. Was that selling powder in this district that was covered by the Buckeye Company? A. Yes.

Q. Did the du Pont company have any connection with the Egyptian? A. No—you mean when it started.

Q. At any time? A. No, they didn't. They finally sold out to the Equitable and then the Equitable—the du Ponts have an interest—I perhaps ought to explain that, because I don't want to be mistaken.

Q. But they never had any direct interest in the Egyptian? A. No.

Q. Now where was the Excelsior Powder? A. Their main office is in Kansas City.

Q. And is that a black powder company? A. Yes. 530

Q. Selling powder in this district? A. Yes, I should say so.

Q. Now did the du Pont Company have anything to do with that concern? A. No, sir.

Q. In asking you if they did business in this territory, I mean during these years, of course, that we are talking about, from 1904 to 1908? Now the Locust Mountain Powder Company, do you know where they are? A. Yes.

Q. What was it? A. Black powder company.

Q. Where abouts? A. Pennsylvania.

Q. Was it competing with the du Pont Company? 531
A. Have any interest in it? No, sir.

Q. The Nuremburg Powder Company, where was that? A. Pennsylvania.

Q. Did it manufacture black powder? A. Yes.

Q. Was it competing with the du Pont interests? A. Yes.

Q. Did the du Pont company have anything to do with it? A. No, sir.

Q. The Rand Company of Tennessee, do you know about that company? A. Yes.

Q. Where was that located? A. That was at Dorsett, Tennessee.

Q. Did it sell powder in this district during that period? A. I think they did, yes.

532 *Charles L. Patterson—Cross*

Q. Black powder? A. Yes.

Q. And did the du Pont Company have anything to do with it? A. No, sir.

Q. The Senior Powder Company was located where? A. Ohio.

Q. Do you know about when that was organized? A. Well, I think about 1904.

Q. And did it sell powder from then on in this district that was in whole or in part covered by the Buckeye trade? A. I think it did.

533 Q. Did the du Pont Company have anything to do with the Senior Powder Company? A. No, sir.

Q. The Standard Powder Company was located where? A. Pennsylvania.

Q. Did it manufacture a black powder? A. At the start, yes; they started with black powder.

Q. Did it compete with the du Pont Company? A. Yes.

Q. Did it have anything to do with it, ownership in it? A. No, sir.

Q. The Tennessee Powder, do you recollect that

534 concern? A. I think there was such a company; really I have forgotten.

Q. Do you know where it was? A. Well, if I am right it was located in Alabama, but I am not sure.

Q. You don't remember? A. No.

Q. Where was the United States Powder Company? A. They were located in Indiana.

Q. Covering part of this field that was covered by the Buckeye Company? A. I should say so.

Q. And did the du Pont Company have anything to do with it? A. No, sir.

Q. That company manufactured black blasting powder? A. Yes.

Q. Now isn't it true that all of this list of companies that I have mentioned up to date were or-

ganized since the organization of the Buckeye Powder Company or shortly thereafter? A. I think that is practically correct.

Q. And isn't it true that they are practically all doing business to-day? A. Yes, sir.

Q. And isn't it true that during all that time they had been competing with each other and with the du Pont company? A. Yes, I think that is correct.

Q. Now, in addition to these companies that have been organized since 1904, were there other 536 companies competing for the black blasting powder trade in this territory tributory to Peoria, Illinois, older companies? A. Yes, sir.

Q. Was the Austin Powder Company selling black blasting powder in that territory during those years? A. It is my impression they were.

Q. And were they competing with everybody else there? A. As far as I know they were.

Q. Was the Olney Company doing likewise? A. I think so.

Q. Was the King Company doing likewise? A. 537 The King Company?

Q. King Powder? A. I think they were most of the time.

Q. Now, do you remember a company by the name of Rand Company of New York state? A. Yes, sir.

Q. Was that selling black blasting powder? A. Yes, sir.

Q. And was it competing with the du Pont Company there? A. Yes.

Q. Was there another company at Fairchance? A. Yes, sir.

Q. In what state? A. Pennsylvania.

Q. Was that selling black blasting powder? A. Yes.

Q. Did the du Pont Company have anything to do with either of those concerns? A. Not that I know of.

Q. Now, in the high explosive trade were there a large number of companies during this period that were in active competition with the du-Pont Company and in which they had no interest whatsoever? A. Yes.

Q. There were? A. Yes.

Q. I call your attention to the following list of
539 companies. To begin with are you familiar with the high explosive business during that period enough to speak of these——A. I think so.

Q. Do you recollect the Allentown Non-freezing Powder Company? A. Yes.

Q. Was that competing? A. Yes.

Q. Where was is located? A. I think they were near Allentown—I don't know——

Q. Pennsylvania? A. Yes.

Q. American High Explosive Company? A. I don't know, I don't remember about that one.

540 Q. The Emporium Company? A. Yes, Pennsylvania.

Q. Competing? A. Yes, sir.

Q. Did the du Pont Company have any interest in it? A. No, sir.

Q. Illinois Powder Company? A. Yes.

Q. In Illinois? A. Illinois.

Q. Du Pont Company have any interest in it? A. No, sir.

Q. The Jefferson Powder Company? A. Yes.

Q. Where abouts? A. Alabama.

Q. Did the du Pont Company have any interest in it? A. No.

Q. Messerite Company? A. Pennsylvania.

Q. Du Ponts have any interest in it? A. No, sir.

Q. The Monquagon——A. No, sir, I don't know of that.

Q. The Pluto Powder Company? A. Yes.

Q. Where was that located? A. They had a plant in the Lake Superior region.

Q. Did the du Pont Company have any interest in that? A. No, sir.

Q. It was competing with them? A. Yes.

Q. Potts Powder Company? A. Yes.

Q. Did the du Pont company have any interest in that? A. During that period? 542

Q. Yes? A. No, sir—they have now.

Q. During that period? A. No, sir.

Q. That was in Pennsylvania? A. Yes, sir.

Q. The Puget Sound and Alaska Powder Company? A. Yes.

Q. Where was that located? A. I think that was in Washington.

Q. Sinnamahoning Powder Company? A. Yes, Pennsylvania.

Q. Was that competing? A. Yes.

Q. Did the du Pont Company have any interest 543 in it? A. No.

Q. The Texas Dynamite? A. Yes, in Texas.

Q. Did the du Pont Company have any interest in that? A. No.

Q. The Trojan Powder Company? A. Yes.

Q. Where was that located? A. I think that was in Pennsylvania, but I won't be sure of that.

Q. Did the du Pont Company have any interest in that? A. No, sir.

Q. West Pennsylvania Dynamite Company? A. West Penn., yes, that is in Pennsylvania.

Q. Did the du Pont Company have any interest in that one? A. No.

Q. Are those companies practically all doing business now? A. Why, I think practically all are.

541 Q. And during all of this period were they competing with each other and the du Pont Company?

Q. But during all of that period were they competing with each other and the du Pont and other companies, during all of that period? A. Practically, yes.

Q. Now, on the West Coast was the Giant Powder Company? A. Yes, sir. That is in California.

Q. Was that competing? A. Yes, sir.

Q. Making black blasting powder and dynamite?
545 A. Yes, sir.

Q. And was also the Equitable Powder Company selling black blasting powder during this period in this district? A. Yes, sir.

Q. And that is a company in which the du Pont Company has a minority stock interest, is it? A. Yes, sir.

Q. Where did the Equitable have its mills located? A. They had a mill near East Alton, and another one near Fort Smith.

Q. What State? A. Arkansas.

Q. Arkansas? A. Yes.
546

Q. Is there an Illinois Dynamite Company? A. Yes.

Q. Was that doing business during this period? A. Well, I would not like to say positively whether it was.

Q. The Illinois Dynamite Company? A. I am not sure as to that.

Q. It was a late company, was it not? A. Yes, comparatively.

Q. Now, in regard to the situation, I will ask you, who organized the Buckeye Powder Company, if you know? (Objection sustained.)

Q. Do you know who the officers of that company were? Objection overruled.) A. Not of my own knowledge. I have heard that Mr. Waddell was president; I do not know.

Q. Do you know what Mr. Waddell's business had been prior to that time? (Objection sustained.)

Q. Now, in regard to this interview that you had with some gentleman by the name of Koller and some other gentleman, was it not a fact, or was it the fact, that they represented the Rockdale Powder Company? Did they represent a large number of companies, or claim to do so? A. Well, I can not say—these three gentlemen represented or were either officers or owners of the three interests. I do not know. 548

Q. Well, what I was getting at, there was not a conversation in reference to the contest that had been directed against the Rockdale Powder Company, was it particularly? A. I have no recollection of it.

Q. In fact, it was an occasion in which some of these people came to you and tried to get you to enter into a price agreement with them, was it not, Mr. Patterson? A. My impression is that that was Mr. Haskell's understanding of it.

Q. And the result of it was that you said you would not make any price agreement. Was not that the result of the conversation? A. He may have said that. 549

Q. Now, this 95 cent price, you can't locate the date of it any more correctly, can you, Mr. Patterson? A. No, only in answering, Mr. Abbott, my impression is that that price did prevail during part of the period mentioned.

Q. Well, would you say as early as 1905? A. No. My impression is that—but I would not say positively.

Q. What caused that price? A. What?

Q. What caused that price? A. Competition.

Q. Competition at the hands of what companies? A. A number of companies.

550 *Charles L. Patterson—Cross*

Q. Including the Buckeye? A. I should say so.
Q. Who started the price-cutting in those years?

Question objected to and objection overruled.

To which ruling the plaintiff's counsel then and there excepted and said exception was allowed.

551

(Question repeated by the Reporter).

The Court: Speak of your own knowledge.

A. I could not answer that question, Mr. Button, definitely. I know what I think.

Mr. Abbott: We object to what the witness thinks.

The Court: You may have his best recollection, of course.

552

A. My best recollection is that the Buckeye Company did it.

Q. Well, now, you were cognizant of the operations of this sales board and the sales at that time. I wish you would state what the policy of that organization was during these years in reference to prices, and as to what considerations entered into the fixing of prices by which you sold your powder? A. The very important consideration that entered into the fixing of prices was with due consideration to profits, so far as we could make them, and to hold what we considered was a fair volume of our trade.

Q. Now, then, what information did the sales board have which fixed these prices, in reference

to the prices that were being charged by other companies, say the Buckeye Powder Company, or the Senior or any other companies? What information did they have before them when they were considering what prices they would sell for? A. Letters and trade reports.

Q. Yes, this trade information that you have previously mentioned? A. Yes, sir.

Q. Now, then, did that board have, so far as you know, information of prices named in some way, 554
that were below your best information that you had in that way, as to what your competitors' prices were? A. I think not. That is my recollection.

Q. Well, now, why didn't you? Why didn't you consider it necessary? A. Our managers and salesmen were always anxious to get authority to make equal prices with all competitors, believing that they could hold their own if they had equal prices.

Q. Why did your board consider that you could hold that trade, or a reasonable part of it, by doing no more than at least meeting the prices? A. Well, 555
the du Ponts had an established trade, and we felt that the customers would keep the du Pont Powder, as a rule, if they could not do better with someone else.

Q. What do you mean by doing better? A. Better prices, or lower prices.

Q. That is, by equal prices——? A. They could hold their own.

Q. Well, now, I suppose it would sometimes occur that the information of this character that you had might be incorrect, that this competitor might have been selling powder as low as those reports indicated; is that true? A. Possibly.

Q. But so far as your information went, that was the policy they had, was it? A. Yes, that is my recollection.

Q. During this whole period? A. That is my recollection.

Q. Now, in the matter of meeting prices, supposing the competitor went away down, was there a point at which it stopped following him? A. Yes.

Q. What was that point? A. Well, we fixed the limit, and we lost a great deal of business, from my recollection.

557 Q. What were the considerations that fixed that limit, below which you would not go? A. Well, the limit of profit.

Q. In other words, you would not sell below cost; is that it? A. That was our aim.

Q. And so far as you know, you never did, did you, Mr. Patterson? A. Over the whole country, do you mean?

Q. Yes. A. No, sir.

Q. During this period? A. No, sir; taking the country as a whole, I think we never did.

558 Q. Didn't this Pittsburg District, which you have mentioned, also include a large and important section of the state of Maryland? A. I think it did.

Q. In which there was a great deal of consumption of black powder? A. A good deal of black powder.

Q. Did you name the general territory through which the Buckeye Powder Company operated? A. Well, I tried to outline it as well as I could remember. Where I knew the Buckeye Powder Company was selling.

Q. Did you mention Kansas? Did they operate in Kansas? A. I think it sold some powder in Kansas.

Q. And Colorado? A. And Colorado, that is my recollection.

Q. And Indiana and Iowa and Ohio? A. I think so.

Q. And Missouri? A. And Missouri, I think.

Q. And Nebraska? A. Well, I do not remember about Nebraska. I think they sold some in Montana, if I remember rightly.

Q. And of course in Illinois? A. And Illinois.

Q. Now, during your experience with that sales board, did they ever make any competitive drives against any particular competitor, Mr. Patterson? A. I have no knowledge of anything of that kind being done. I have no recollection.

Q. Was there during those years of 1904, 1905, 560
1906 in the Middle West a great scramble for business in the black powder business? A. Yes, sir.

Q. Was the capacity of the general lot of mills for the production of black powder at that time much greater than the consumption? A. Yes, sir.

Q. And there was a continuing increase of capacity, as compared with consumption, was there not, during those years? A. Well, it was surely up to 1906.

Q. Was there an independent powder company 561
that I did not mention, or a dynamite company? A. Yes, sir.

Q. The Joplin? A. The Joplin.

Q. Do you know when that company started in? A. No; I don't.

Q. Did the du Pont Company have any interest in it? A. No, sir; but they have been operating for quite a few years.

Q. Well a period during the period in question? A. Certainly, lots of it, or a good deal of it.

Mr. Button: That is all.

Redirect examination by Mr. Abbott:

Q. You stated a moment ago that taking the country as a whole you thought you never had sold below cost? A. That is my impression, Mr. Abbott.

Q. Will you state in what particular portions of the country you may not have sold below cost? A. In what?

Q. In what particular portions of the country do you think you may have sold below cost? A Well,
563 I think it was a pretty close question whether they would run on the prices made, considering the business that we had in the anthracite district. I think including the rest of the country we made money.

Q. Can you give any particular instance in which you sold below cost? A. No, sir; I cannot.

Q. Can you give any particular state in which you sold below cost? A. No, sir.

Q. Can you give any particular customer to whom you sold below cost? A. No, sir.

Q. Upon what do you base your impression that you did sell below cost at some time or some place?
564 A. I think my recollection is that from the net result of the business in 1906, Mr. Abbott, we made a very small margin of profit, but we did not lose money.

Q. That was on your whole business? A. On the whole business, yes, sir.

Q. That was on the business where you sold at a profit as well as on the business that you sold at a loss? A. Taking it as a whole; yes, sir.

Q. Now, then, I wish you would specify the particular occasion that you have in your mind, when you made a sale below cost? A. I have not any.

Q. Then, why did you state that taking the country as a whole you thought you did not sell below cost? A. I said we made some money.

565

Q. Why did you state that you thought you did not sell below cost, if it was not in your mind that you may have sold below cost under some circumstances? A. Well, I think that there must have been some instances where we were mighty close to cost, because we did not show much profit.

Q. Where were those instances? A. I do not remember any specific instances.

Q. Were any of those cases in the State of Illinois? A. I think that district was very close to cost, because of the competitive condition; yes, sir.

566

Q. Do you know of any cases in the state of Missouri? A. No, I do not.

Q. Do you know what year it was that you sold below cost? A. I do not know that we did sell below cost.

Q. Well, coming to your own statement, what year was it when you think you may have sold below cost in this business? A. What year?

Q. Yes. A. Well, I think 1906 was the closest year we had.

Q. That was the year that this price of 95 cents prevailed? A. That is my impression.

567

Q. Now, you stated a while ago that from your best recollection the Buckeye Company first cut prices, is that correct? A. That is my impression.

Q. Well now, upon what do you base that impression? A. I do not see how any concern can start in business and get along, except by cutting prices. I have no specific case in mind.

Q. You have not mentioned any amount in which the Buckeye Company cut prices? A. Not at present.

Q. Then, your answer was purely an imaginary one? Is that right? That they might have done it, if they wanted to, in order to get business? A. I do not see how it could get business if it did not.

Q. Now, is that the sole reason that you stated that the Buckeye Company was the one which started the price cutting, in order to get business? A. That is my impression. I have no specific case in mind.

Q. Now, what was the particular business that you lost? You stated that you had lost a good deal of business. What business did you have in mind that you lost? A. I do not remember that. I remember saying that a great many new mills started
569 in that business.

Q. Well, I am trying to get out as to what business you lost. You say you lost a good deal of business. I want to know what business it was that you lost? A. I cannot say specifically.

Q. Well, then, why did you make the answer that you lost a good deal of business, unless you knew what business it was you lost? A. We could not help losing business if a good many new mills started.

Q. I want to get at the fact now, what business
570 was it that you lost, what customers? A. I cannot state that.

Q. Well now, do you know of a single customer that you lost? A. Not specifically, no.

Q. Mr. Patterson, you stated that during the years 1903 to 1908 there were five large mills built. What were those large mills? A. My recollection is there was the United States Powder Company——

Q. Will you speak a little louder? A. Yes. The United States Powder Company, Egyptian Powder Company, the Senior Powder Company and the Miami Powder Company built a new mill down Phebes, according to my recollection, that is four. And the Excelsior Powder Company was built in that time.

Q. Where was the Excelsior Powder Company? A. Near Kansas City.

Q. Where is the Black Diamond Coal Company or its property located? A. Pennsylvania.

Q. How large a plant is that? A. I think not a very large one.

Q. Well, how large? A. Well, I really don't know what the capacity is?

Q. Can't you indicate something about its capacity? A. No, Mr. Abbott, I could not.

Q. Don't you know definitely? A. I know it is a 572
small mill. It does not make a very considerable amount of powder.

Q. Where is the Barton Powder Company located? A. Their main office is in Pittsburgh.

Q. I am speaking about their plant now. A. I don't recall, I don't know; I think it is over the line from Pennsylvania, right near the line.

Q. What is the capacity of that mill? A. Well, I don't know, but it is quite a producer.

Q. Have you any means of ascertaining? A. Yes, I think I could tell approximately; I should say, roughly, 1,000 to 1,500 kegs a day, but I would not 573
say that positively.

Q. Will you verify that statement? A. I can't. I can look it up from the best knowledge we have.

Q. Upon what do you base that information? A. In a general way on how many wheels there are in the mills, and the capacity is generally rated by the number of wheels.

Q. Well, how many wheels are there in this mill? A. I don't know.

Q. Do you know anything at this time as to the capacity of that mill? A. Only what I have heard.

Q. Only what you have heard? A. Yes.

Q. What is the output of the mill? A. I think they run pretty full.

Q. Well, by "full" how much of an output? A. I don't know.

Q. You don't know that? A. No.

Q. Now the Egyptian Powder Company, how about that; what is the capacity of that mill? A. I couldn't tell you.

Q. Where is that mill located? A. It is in Illinois, I think, called Marion, but I won't be positive about that.

575 Q. Have you any idea as to what the capacity of that mill is? A. Not accurately.

Q. Is it a very large one or a small one? A. It is a good sized mill.

Q. What do you mean by a good sized mill? A. I should think it is a mill that makes a thousand kegs a day.

Q. Now, then, how many kegs a day does this mill make? A. I don't know.

Q. Who owns that mill? A. Yes—now, do you mean?

Q. Yes. A. That mill is owned by the Equitable

576 Powder Company.

Q. How long has it been owned by the Equitable Powder Company? A. I couldn't tell you that.

Q. I beg your pardon. A. I can't answer that.

Q. The Equitable Powder Company, any part of that owned by the company in which you are interested, the defendant in this case? A. Any part of the Equitable?

Q. Yes, how much? A. My collection is 49 per cent.

Q. Forty-nine per cent. of the Equitable Company is owned by the duPont Powder Company, the defendant in this case, and the Equitable Company owns the Egyptian? A. Well, not exactly, Mr. Abbott, my recollection is that the Equitable controls the Egyptian; doesn't own it.

Q. Well, it controls it? A. Yes.

Q. All right, I ask you as to the output of these other two mills, or rather as to the capacity, but I mean output when I say capacity. You will understand I mean output, will you? Do you know the output of the Burton Powder Company? A. The annual output—no, sir, I do not.

Q. Do you know the output of the Egyptian Powder Company? A. I do not.

Q. Do you know the output of the Equitable Powder Company? A. Only from hearsay. The 578
Equitable——

Q. Yes. A. Well, now, are you speaking of the Egyptian?

Q. No, I am speaking now of the Equitable Powder Company? A. No, I couldn't answer that question.

Q. That is the company in which you are 49 owners? A. Yes.

Q. Now, the Excelsior Powder Company—what is the output of that mills? A. I couldn't answer that definitely.

Q. That is in the Kansas district? A. That is in 579
the Kansas field.

Q. Have you any idea what the output is? A. I think it is above a thousand kegs, but that is just my idea of it.

Q. Have you any means of obtaining any information upon that point? A. Yes, I could get some information, but I don't know whether it would be accurate.

Q. Take the Locust Mountain Powder Company, how much of a mill, what is the output? A. I don't know; it is a small mill.

Q. Where is that located? A. Pennsylvania.

Q. Neurenburg Powder Company, how much of a mill is that? A. A small plant, Pennsylvania.

580 *Charles L. Patterson—Redirect*

Q. How small? A. Well, it is less than a thousand kegs a day.

Q. The Senior Powder Company of Ohio, how much of a mill is that? A. I think that is a good sized mill.

Q. Well, how much, what is the output? A. I don't know, I should say from what I have heard it is a thousand kegs; I don't know.

Q. The Standard Powder Company, how about that? A. I think that is a good sized mill.

581 Q. What is the output of that mill? A. I don't know.

Q. The Tennessee Powder Company, how about that? A. I think that is a good sized mill; I don't know its output.

Q. The United States Powder Company, what plant have they? A. They have got a large plant, I think.

Q. Where is that located? A. In Indiana, but I don't know the town.

Q. And what is the output of that mill? A. That
582 is more than a thousand kegs a day from my recollection.

Q. Now, then, this United States Powder Company, do you have any interest in that plant? A. My recollection is that when the Equitable bought the Egyptian plant that they got a small interest.

Q. The Equitable Powder Company owns an interest in the United States Powder Company? A. I think a small interest.

Q. And you own 49% in the Equitable Powder Company? A. Yes, that is right.

Q. Now, the Austin Powder Company, that is located in Ohio? A. Yes.

Q. You have an interest in that do you, how much of an interest? A. Some thirty odd per cent,

I think, perhaps thirty-three, something in that neighborhood.

Q. How long have you owned that interest? A. Long before—I couldn't answer.

Q. The Miami Powder Company, where is that located? A. They have two black powder plants.

Q. Where are they located? A. One near Xenia, Ohio and one near Phebes, Illinois.

Q. Who are those plants owned by? A. The Miami Powder Company.

Q. Have you any interest in that? A. No. 584

Q. No interest at all? A. No.

Q. What is the output of the Miami Powder Company? A. They are both large plants, I couldn't tell you what the output is definitely.

Q. How large? A. Well, my impression is more than a thousand kegs a day each.

Q. Now, the Rand Powder Company of New York, how much of a pant is that? A. I think that is not so large, I think it is a small plant.

Q. Where is it located? A. In New York State; I do not know. 585

Q. Is this the plant known as Widow Rand Mills? A. My impression is it is.

Q. Isn't is a very small plant indeed? A. Well, from our point of view it is small; but I could not say how many kegs they can make.

Q. Take the Fairchance—the Rand Powder Company of Fairchance, how much of an output has that plant? A. I think that has not very much of an output now, I think that plant has not any output at present.

Q. How much did it haved uring the year 1903? A. When it was operating it was quite a good sized plant.

Q. When it was operating, how much was it? A. I can not answer that.

586 *Charles L. Patterson—Redirect*

Q. Was it operating in 1903? A. I think it was operating then, that is my impression.

Q. Did it cease operating in 1903? A. I could not say definitely.

Q. Are there any other companies that you know of, any other powder companies that were in existence during 1903 to 1908, excepting those you have enumerated? A. In existence.

Q. Yes, that is that were in existence and as you say were competitors of yours? A. I can not
587 think of any now, perhaps there are some.

Q. Now then, what was the total amount of black blasting powder per year manufactured by all of these plants which you have enumerated in the United States during the year 1903? A. I could not answer that.

Q. You could not answer that? A. No.

Q. Do you know what percentage of the output of black blasting powder was manufactured at these mills, the total output in the United States during the year 1903? A. No.

588 Q. Have you any idea? A. No, sir, I could not give any idea.

Q. Was it as much as five per cent? A. I should say it was more than that.

Q. Well, how much more? A. I do not know.

Q. I want you to state now your best recollection? A. I do not know definitely; I could not say.

Q. Is there any way that you can get a table or statement or any data upon that subject, which would show the total output of these mills, during any of the years from 1903 to 1908, inclusive? A. I think so.

Q. Will you do so? A. If I am so instructed I will do so. (After colloquy between the Court and counsel.) You want the output, Mr. Abbott?

Q. Counsel has suggested he will get the infor-

mation, and I will arrange with him so that that matter will be put before you? A. All right.

Q. Can you get the information as to the total amount of the output of black blasting powder of all the mills which were under the control, either owned by or under the control of the E. I. du Pont de Nemours Powder Company during the same dates? A. Under the control?

Mr. Button: I understand by that, that is a statement of the sales and the amount 590
manufactured by the Powder Company? We will also furnish that.

Mr. Abbott: I mean all of the powder manufactured. My purpose being—so that counsel will see what I am desiring to get at: To show the relation between these mills and the mills controlled by the defendant in this case.

Mr. Button: I don't know of mills controlled except those that we own, if that is what you mean, we are very willing to furnish that. 591

Mr. Abbott: All right.

Q. Now, then, the high explosives trade—take the mills of the high explosives trade, the Allentown Non-Freezing Company, how large a plant was that during 1903? A. I don't know.

Q. Where was it located? A. My impression is it was in the neighborhood of Allentown; I never saw it; I do not know.

Q. Don't know anything about its capacity? A. No.

Q. Take the American High Explosive Company, how much of a plant was that? A. I don't know.

Q. The Illinois Powder Company, how much of

a plant was that? A. That is a moderate sized plant; I think that is quite a large one; I don't know its output.

Q. The Jefferson Powder Company—the Jefferson Powder Company I judge was the name?

Mr. Button: Jefferson was in the name. I don't know whether Jefferson Powder or Jefferson Dynamite Company, I don't know that.

593

Q. Do you remember such a company as the Jefferson Powder Company? A. Yes.

Q. How large a plant did it have, and what was the output? A. I could not answer that; I don't know.

Q. The Messerite? A. The Messerite, that is not in existence.

Q. When did it go out of existence? A. I could not answer that definitely.

Q. Was it in existence during 1903 and 1908? A. Part of the time, my impression is it was.

594

Q. Was it the early part or latter part? A. Well, I think, I feel quite sure it was in operation the early part.

Q. How much of a plant was that, what was the output? A. Not very large.

Q. Take the Pulto Powder Company, how much of a plant was that? A. Good sized plant.

Q. What was the output? A. I don't know.

Q. Where was that located? A. That was located near Ishpinning, Michigan.

Q. Take the Potts Powder Company, where was that plant located? A. They were located over in Tamaqua, Pennsylvania.

Q. How much of a plant was that and what was the output? A. That is a good sized plant.

Q. By that will you indicate how many pounds? A. I don't know how many pounds.

Q. Take the Sinnamahoning Company, where is that located? A. Near Sinnamahoning, Pennsylvania.

Q. How much of a plant is that? A. My impression is that is a good sized plant.

Q. By that you mean how many pounds? A. I don't know; but quite a large production.

Q. Now, this Puget Sound in Alaska plant, where 596
is that located? A. My impression is it is in Washington, but I never saw it and I am not sure.

Q. Do you know anything about that plant? A. No.

Q. As a matter of fact is not that plant owned and controlled by the E. I. du Pont de Nemours Powder Company? A. Not to my knowledge.

Q. Did it ever have any interest in it? A. Not to my knowledge.

Q. Do you know what the output of it was? A. No, I don't.

Q. During 1903 to 1909? A. No, sir, I don't. 597

Q. Take the Trojan Powder Company, where is that located? A. I think they have one plant in the East and one in the West, if I am not wrong about it.

Q. What was the output of that plant? A. I don't know.

Q. The Illinois Powder Company, where is that located? A. In Illinois.

Q. What is the output of that plant? A. I could not tell you, I don't know.

Q. Take the Giant Powder Company in California, how much was the output of that plant? A. I don't know, it is a large plant.

Q. Take the Joplin Powder Company—that is in Missouri? A. Yes, at Joplin.

Q. What is the output of that plant? A. Quite a large plant.

Q. How large? A. I don't know.

Mr. Abbott: Now, then, can you furnish, on the same basis—I make it as a request, a statement showing the entire output of these companies which you have stated were in independent companies of high explosives during the year 1903 to 1908 inclusive for
599 each year. I will ask Counsel on the other side whether they would be willing to make the same stipulation in regard to dynamite or high explosives?

Mr. Button: We can do that.

Mr. Abbott: Both as to these companies that have been named here and as to the companies controlled by the defendants in this case.

Mr. Button: What I understand you want is the percentage of the total trade done by this defendant and the percentage
600 that is done by people that are not controlled by it.

Mr. Abbott: As named by the witness.

Mr. Button: Including any others that there may be.

Mr. Abbott: If there are any others I would like to know it.

The Court: I think if he furnishes them that is all you are entitled to, not merely those that have been named, but any others that they may know of.

Mr. Abbott: If you will follow the names that have been given by this witness——

Q. Do you know of any other powder plants that

are not included in the list that I have named to you to-day that were supposed to be competing plants? A. I can't think of any now, Mr. Abbott, but if any such exists I can find them and give them to you.

Q. But so far as you know now the list which I have indicated to you is a full list? A. That is my recollection.

Q. Do you know whether any matter ever came before your sales board or before you as director of sales with reference to the means employed by any of the agents to secure information from your competitors as to the condition of others in business? A. I have no recollection of it. 602

Q. You have no recollection of it? A. No.

Q. Did you ever disapprove of any of the acts of your agents in securing the information which he was instructed to secure?

Mr. Button: I don't know whether they should be confined to matters so far as they were reported to him of his own knowledge. 603

The Court: Of course that is the limitation implied.

Q. (Continuing). I will incorporate that. A. I have no recollection.

Q. You mean you have no recollection of whether you approved or disapproved, or whether you ever disapproved, is that what you mean? A. Yes.

Q. Mr. Patterson, refresh your memory and state whether or not a plant known as the "Widow Rand" Mill has not been out of business for more than 20 years? A. I do not know. I know that there is a Rand mill in New York State. I do not know whether it is the "Widow Rand" Mill. Neither do I know how much it is making.

604 Q. Do you know where that plant is located? A. No, sir.

Q. Is it not a fact that the mill known as the Rand mill, at Fairchance, Pennsylvania, blew up a great many years ago, and has never been re-erected or re-constructed? A. Yes, sir.

Q. That is true? A. That is true.

Q. Now, I am talking about the "Widow Rand" Mill at Fairchance, Pennsylvania. This Allentown Mill— didn't it go out of business a great many
605 years ago, before the Powder Company came into existence? A. I don't remember.

Q. You don't know that? A. No.

Q. Will you kindly state why you included the "Widow Rand" Mill and the Fairchance Mill as among the mills that were in competition with you during 1903 to 1908, when you now say that you do not know whether they were in existence or not? A. My recollection, Mr. Abbott, was that the Rand mill did not blow up until after that time. I may be wrong about the
606 time.

Q. You do not know that it was in existence between 1903 and 1908? A. I think it was.

Q. I will ask you to refresh your memory once more and state whether or not there are any other mills on this list of the names of mills that you have given here as being your competitors, from 1903 to 1908, which were not in existence during that period? A. I will give you the exact information if you will let me go through the records, Mr. Abbott, if that will be satisfactory?

Q. Well, from your best recollection at this time, you are not able to say whether there were any ther mills that were not in existence between the periods of 1903 and 1908, are you? A. I think the

list that you have mentioned is as near as I can remember.

Mr. Abbott: That is all.

Recross examination by Mr. Button:

Q. Wait a moment, Mr. Patterson, let me refresh your recollection as to the Rand Mill. Did not the Fairchance mill blow up by an explosion on the 25th day of September, either in 1905 or 1906? 608
A. I think it was after 1903, as I told Mr. Abbott.

Q. And don't you recollect that the Rand Mill in New York State, known as the Widow Rand Mill, has been running up to within two or three years of this date? A. That is my impression.

Q. So you have not intended to testify that any of these companies were out of business during the whole period from 1904 to 1908? A. That is my impression that they were operating.

Q. Out of business? A. No, were operating.

Q. Then you mean that you have not intended to 609
testify then, in answer to Mr. Abbott's last question, or that it is your present recollection that they any one of those mills was absolutely closed down during this whole period? A. No.

Q. Do you intend now to testify that these mills that you have mentioned, were not doing business during that period? A. Well, my impression was Mr. Button, that they were operating.

Q. (By the Court) And that is still your impression? A. That is still my impression, yes, sir.

Q. Now you have testified that the du Pont Company owns 49 per cent of the capital stock of the Equitable Powder Company and some thirty per cent of the Austin Powder Company. I will ask you whether, as a matter of fact whether the Pow-

der Company exercises any control whatsoever over the policies, the prices or the operations of either of those companies? (Objection overruled.). A. They don't.

Q. Were those two companies active and independent competitors of the du Pont Company during this period? A. Yes, sir.

Q. As a matter of fact were they selling black blasting powder in this territory of the Middle West? A. I think they both were.

611 Q. Well, now, do you know of any individual instance of the selling of powder below cost in that territory or anywhere else in the United States in 1906? A. No, I don't.

Q. Your statement in that regard—I understood you to say was based on the fact that the margin of profit emassed here was very slight in the black powder business? A. Very slight.

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612 T. COLEMAN DU PONT, called and sworn as a witness for the plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. du Pont you reside in Wilmington, I believe? A. Yes.

Q. You are the President of the defendant, the E. I. du Pont de Nemours Powder Company? A. Yes.

Q. How long have you been president of that company? A. Since it was incorporated.

Q. When was that? A. 1902 or 1903.

Q. What was your position before that, before you became president of the present company, the present defendant, the E. I. du Pont, de Nemours

Powder Company? A. Street railways, steel, coal mining.

Q. I am speaking of the immediate time preceding of the coming into existence of the defendant did you have any connection with any company that was engaged in the powder business? A. Oh, yes, when I came in the powder business I took the place of my cousin and there were quite a number of companies in which the du Ponts were interested.

Q. Now who was your cousin? A. Mr. Eugene du Pont. 614

Q. What position did he hold at the time when you took his place? A. He was president of the E. I. du Pont de Nemours & Company.

Q. He had died just previous to that? A. Yes.

Q. Now then when you came to take his place were you elected to succeed him as President of the corporations which he had been the head of? A. Well in many instances I was.

Q. What instances were you? A. Well, there was a new company formed to take—which purchased the E. I. du Pont de Nemours & Company 615 and Mr. Eugene du Pont was president of some of the companies, I don't know how many, that were controlled by the du Ponts, and I think in most instances I was put in his place on those boards, sometimes as president and sometimes I was not.

Q. The du Pont interests that you have reference to had been a partnership for some time previous to your coming in? A. No, sir; a corporation.

Q. At the time when you came into possession of them, or rather succeeded Eugene du Pont, they were a corporation were they? A. A corporation, yes.

Q. What was the name of that corporation? A. The E. I. du Pont de Nemours & Company.

Q. Did you acquire any actual control over the affairs of that company? A. We did by purchase.

Q. Who do you mean by "we" ? A. The company that bought them out.

Q. What was the name of that company? A. The E. I. du Pont de Nemours Company.

Q. Now, how did you come to buy out those interests? A. Well, how do you mean, "how did we come to buy them out."

Q. Did anybody approach you to sell those in-
617 terests to you? A. Yes, sir.

Q. Who was that? A. My cousin.

Q. Who was he? A. Mr. Alfred du Pont.

Q. Did he make a proposition to you? A. Well I don't know that he exactly made a proposition.

Q. Did you enter into negotiations with him then for the purchase of the property? A. Well I entered into negotiations with him and others.

Q. Now state what those negotiations were? A. Well, at the time of Mr. Eugene du Pont's death none of the other members of the corporation felt
618 that they were able to take charge of it and take his place. Their training had been in the manufacturing line and they were all getting old, and they did not care to go on further, and they wanted to get out of the business, so we formed this company and two of my cousins and myself—and said, "if you gentlemen want to we will buy out this company from you."

Q. Now the two cousins that you referred to were Mr. Pierre S. du Pont and Mr. Alfred I du Pont? A. They were the two most importantly interested.

Q. Well, were there any others that were associated with you three gentlemen in organizing the E. I. du Pont Company? A. Oh, yes; the old board and the old people had a majority on the Board of Directors.

619

Q. Oh, they had a majority on the Board of Directors? A. Yes.

Q. Who were they; will you give me the names of those who constituted a majority of the Board of Directors? A. Why, Francis G. du Pont, Alexis I. du Pont, Henry A. du Pont, I do not remember whether Charles I. was or not at that time, but of the old company there were a majority, Pierre and myself being the only two that had not been there before. There were seven directors, Pierre, Alfred and myself.

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Q. Did those old interests have a majority of the stock of the company, of the E. I. du Pont de Nemours Company? A. No, sir.

Q. Who held a majority of the stock? A. The majority was held by Mr. Pierre du Pont, Mr. Alfred du Pont and myself, but under an agreement that they should have control of the Board of Directors, a majority of the Board of Directors until certain sums of money had been paid.

Q. How long did that agreement continue? A. Until they were satisfied or that amount of money was paid. I don't remember, sir, just how long.

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Q. Can you state whether it was one year or two years? A. I cannot.

Q. Can you state whether it was after the organization of the E. I. du Pont de Nemours Company, or before? A. Why, I would say the organization of the company was about the date it was changed.

Q. The payment of this amount that was dependent upon the agreement then depended somewhat upon the organization of the E. I. du Pont de Nemours Company? A. No.

Q. Well, you say it terminated about that time. After that did these gentlemen, any of them, appear on the Board of Directors of the new company? A. Oh, yes.

Q. Who of them came to the Board of Directors of the new company? A. Well, I think all but Henry A. duPont were on there until they died of the old members of the family.

Q. Now, Henry A. duPont is the United States Senator, is he not? A. Yes, sir.

Q. Wasn't he at that time? A. No, sir.

Q. Not in 1902? A. No, sir.

Q. What was the relative proportion of the interests in the stock of the E. I. duPont de Nemours
623 Company which you, Pierre and Alfred I. duPont held? (Objection overruled.) A. Which company was that, Mr. Abbott?

Q. I am referring now to the company which you organized to take over the duPont interests? A. We had about seventy per cent.

Q. Now, I am asking you as to the relative interests which you three gentlemen have, or have any one of you more than the other? A. Yes.

Q. Well, now tell me how that stock stood with regard to you three? A. Well, the three of us had
624 seventy per cent.; doesn't that answer the question?

Q. No, I want to find out how much you had, how much Pierre had and how much Alfred I. had. (Objection sustained.)

Q. Do you know anything about the organization which was known as the Gunpowder Trade Association? A. Well, when I got into the powder business——

Q. In the first place, will you kindly say yes or no to that, and then explain? A. I do.

Q. Yes, now then you can explain it. A. When I got into the powder business in 1902 I found that there was a good many organizations, and agreements and companies of every kind and description; in fact, I think there were over a hundred that were controlled by du Pont, and this was one of those organizations.

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Q. This Gunpowder Trade Association was one of them? A. Yes.

Q. Did you yourself have anything to do with the business or affairs of that association? A. I attended quite a number of meetings when I first got into the business; it was, I think, the first of March, and I attended meetings for several months after that.

Q. Can you state what the date of the last meeting was that you attended? A. No, sir; I could not.

626

Q. Was it in 1903 or 1904 when you attended your last meeting? A. I don't know, I should say about a year, it might have been fifteen months, it might have been a year, I really don't know.

Q. Then, according to your best recollection it was about some time during the year 1903 when you attended the last meeting; is that correct? A. Well, I don't know; I think it was about a year afterwards.

Q. Then in order to find out exactly what you have in your mind I will ask you when you first attended a meeting of that association? A. Well, I would say in March, April or May, 1902.

627

Q. And that the last time that you attended was in March, April or May of 1903? A. Well, it might have been nine months, it might have been fifteen. I should say a year to the best of my recollection. You know it has been a good while ago.

Q. Now, during the time that you attended those meetings will you state what transpired? A. Why, at those meetings various matters were brought up and questions of prices here and there——

Q. What did you do with questions of prices that were brought up? A. I am going to tell you; say here a price to such and such a company ought to be allowed, or I might move that such and such

a company ought to be allowed to make such a price to such and such a competitor. Now I think everybody sent on and telegraphed the association to cut prices. As far as I could find out that association was one of bluff, they didn't live up to what they were supposed to live up to at all.

Q. You attempted, however, to make arrangements to cut the prices which you maintained between yourselves for the selling of powder? Is that right? A. Well, I say this company, this or-
629 ganization, was formed for the meeting of certain people who were engaged in the powder business; and I went—and I felt before I had been in there one or two meetings that nobody lived up to the prices they made, and it was more of a farce than anything else.

Q. Was anything else done at those meetings besides the attempt to regulate prices? A. I don't recall anything.

The Court (after objection and argu-
630 ment): My impression is that this witness said they regulated prices.

The Witness: I said they attempted to.

The Court: The question whether they carried it out or not is what this witness says wasn't done. But that certainly is what they attempted to do at the meetings.

Q. I will ask you whether anything was done at those meetings for the purpose of adjusting the trade between each other? Did you make allotments? A. It seems to me there was something of that kind.

Q. In other words, didn't you parcel out the trade in the powder business of these companies—so much to one corporation and so much to an-

other? A. I couldn't tell you exactly, but it seems to me there was something of that kind in there. But I felt that nobody had paid any attention to it.

Q. In other words, they went there and made agreements, but did not live up to them, is that right? A. That was my judgment from the first.

Q. What steps did you take, if any, or did you think necessary to take in order to overcome that situation? A. Well, the first steps that were taken by me and those associated with me were to put all the du Pont interests into one concern. 632

Q. What steps did you take to bring about that desire? A. Well, in what way—we formed the company under the laws of New Jersey first.

Q. What was the next step that you took? A. And then that New Jersey corporation took in the various other concerns that were controlled by the duPont companies.

Q. The third step as I understand it then was the organization of the New Jersey Company, which is the defendant in this case, the E. I. duPont de Nemours Powder Company? A. That is right. 633

Q. Now did you attempt in any way to secure any of the other interests which were not known as the duPont interests which were in this Association, this Gunpowder Trade Association? A. Well, I think besides those that were controlled by the duPonts there were one or two in the west that did come in.

Q. What interests were those? A. The California Powder Works, which was not absolutely controlled by the duPonts in stock ownerships, but which was practically controlled by them, because the other stockholders were in no case, or in very few cases, much interested in the powder business and they always went more or less by what the duPonts wanted done, so that they really controlled that as much as if they really had owned it.

Q. What was the stock controlled—which you had in that company? A. The stock interests?

Q. What percentage? A. Forty some.

Q. Forty-seven? A. Forty something, I think. I am sure.

Q. All right. Now, if you will proceed with your answer—or had you finished? A. Well, I think I finished.

Q. Did you make any effort at that time to secure control over what were known as the Laflin &
635 Rand interests? A. Why, they came into the other company through concerns that had been formed that took them over.

Q. What concern was formed for the purpose of taking over the Laflin & Rand interests? A. The Delaware Securities Company.

Q. And was the Delaware Securities Company and its property afterwards absorbed by the Powder Company? A. Yes, sir.

Q. It was. What medium did you use for securing the California companies? Did you have a cor-
636 poration for that? A. They came in direct.

Q. Do you know of a corporation known as the California Investment Company? A. Yes.

Q. What was the purpose of that? A. The Judson Company came in through that.

Q. Where was the Judson Company located? A. California. That is the other company I mentioned in the west.

Q. Now, what other interests that were formerly associated under the Gunpowder Trade Association did you acquire? A. I don't know of any others——

Mr. McCarter: Objected to because it would appear from that question that the interests that were spoken of as having been acquired by the Powder Company had been

in the Gunpowder Trade Association, which is not a fact.

The Court: Yes, it does seem to be that way.

Q. I will go back and make that clear. I will ask you to state whether or not the gunpowder trade association, one of the members of that association was what is known as the Laflin & Rand Company? A. Yes, sir; I think they were.

Q. And what were the interests which were 638 known as the Laflin & Rand interests? A. That I don't know.

Q. Well, those interests which you afterwards acquired through the Delaware Securities Company, were those interests members of the Gunpowder Trade Association? A. I don't remember whether they were or not. The Laflin & Rand was. I think that was the most important interest that the Delaware Securities Company bought out. I couldn't say about the others, sir.

Q. Did the California Powder Company have any 639 interest in or relation with the Gunpowder Trade Association? A. I don't know.

Q. Do you know of an agreement known as the "California Agreement"? A. I don't recall it at this time, sir.

Q. Do you know when the California Powder Works made an agreement with the Gunpowder Trade Association? A. No, sir; I didn't know it was a party to it, though it may have been.

Q. You know of no agreement that was made at an earlier date than your coming into that Association between the California Powder Works and the Gunpowder Trade Association? A. No, sir. I know there were a lot of agreements, but I don't recall that one. However, it may have been.

Q. Do you know of an agreement known as the "Fundamental Agreement"? A. I have heard of that, sir. That name is familiar to me.

Q. Have you ever seen the agreement? A. I don't remember that I ever have.

Q. Have you ever heard it read? A. Not that I remember of.

Q. Do you know of another agreement known as the "Foreign Agreement," or "London Agreement"? A. Yes, sir; I know that agreement, too.

641 Q. Did you have any relations with that agreement in any way? A. Yes.

Q. What relations did you sustain to it? A. After Mr. Eugene duPont's death I was made American Chairman of that—I don't know as you can say Chairman of an agreement, but that is what it was.

Q. Is that agreement in existence at the present time? A. No, sir.

Q. When did it go out of existence? A. 1905 or 1906.

642 Q. Do you know of your own personal knowledge that it went out of existence at that time? A. I do, sir.

Q. How do you know that? A. Because I went abroad and abrogated it myself.

Q. Did you have the original agreement present at the time when you say it was abrogated? A. Yes.

Q. Did you see the signatures to it? A. Yes.

Q. What was done with that agreement at that time? A. It was torn up and burned up.

Q. Torn up and burned up? Have you ever seen any copy of that agreement? A. Only the one you showed me the other day—and I don't know if that was a copy of it.

Q. I show you Government Exhibit 119 on page 1123 and subsequent pages of Petitioner's record of

exhibits, Vol. 2, in what is known as the case of The United States of America, Petitioner, vs. E. I. duPont de Nemours & Company. It is No. 280 in Equity in the United States Circuit Court for the District of Delaware; and I ask you to examine the same and state whether or not you can refresh your memory therefrom? A. I never read the agreement that I remember.

Q. Oh, you never did? A. No, not that I remember of. 644

Q. Let me refer you then to another—I refer you to page 1132 of the same book and look at Government's Exhibit No. 120 on that page and ask you to state whether or not you know anything about that document? A. Well, I don't know that I ever saw it before.

Q. Do you know whether that document was written by you? A. No. I don't think it was.

Q. With your authority? A. Well, there was a man who was with us at the time by the name of Curlett, who I was told when I got into this, that Mr. Curlett knew all about the European agreement, and whatever Curlett—anything that came in about it was referred to Mr. Curlett, through Mr. Dunham sometimes, sometimes direct; and then what he asked me to do I did. 645

Q. And if you signed that document then you signed it because Mr. Curlett asked you to? A. Yes, either Mr. Curlett or Mr. Dunham.

Q. And Mr. Dunham is your private secretary, is he not? A. Yes, sir.

Q. Did you see him in this room to-day? A. No, sir.

Q. Now, in your capacity as American Chairman under this "Foreign Agreement," did you come into the possession of a fund known as the "Common or Syndicate Fund"?

A. Personally I didn't. But I know there were a good many checks came in and went out, but I don't know that I saw any checks that came in and all I did was to sign those that went out.

Q. Now, when these checks came in, did they some addressed to you personally, or how did they come? A. I could not say, sir. I did not open any of the mail.

Q. Now to whom did you leave that business—with reference to these checks—to be transacted?
647 A. I could not tell you how the mail is opened—the mail is opened by two or three people, and it is distributed.

Q. And who were they? A. Well, Miss Smith, and Mr. Dunham, and Mr. Wilson, and someone else out there might have opened it.

Q. Do you know whether or not you received any remittances from a corporation known as the Austin Powder Company? A. Well, I do not remember it.

Do you know whether you received any remittances from a corporation known as the Aetna
648 Powder Company? A. Well, I presume if they were in the agreement, they sent them in, but I did not see any of the checks.

Q. If there were any letters or any documents, bearing your signature, with reference to disbursements of this fund, then you know nothing of those matters personally? A. No, except they said there were some things that came in under that agreement, and I was told to sign them, or to do certain things with them.

Q. I show you Government's Exhibit No. 134 and ask you to look at it and state whether or not you knew anything about that document. (Handing to witness.) A. No, I do not know anything about it.

Q. Do you know whose signature that is attached to it? A. That is my signature, by a rubber stamp.

Q. Was that affixed with your authority? A. I presume it was.

Q. In that connection I will ask you whether or not you generally sign your name on your communications with a rubber stamp, or allow it to be so signed? A. Yes, sir.

Q. Is it not a fact that you sign very few of your letters in your own hand? A. Well a majority is 650
signed with that rubber stamp.

Q. Who has authority to affix the rubber stamp for you? A. Well, I suppose Mr. Dunham and Miss Smith both have authority, and when there are letters or things of that kind I presume they are stamped by anybody in the office that they have gone out through.

Q. Have you any idea at this time, Mr. du Pont, what the total amount was that was received by you as the American Chairman in this "Common or Syndicate Fund," while the "Foreign Agreement" was in existence? A. No, sir; I do not re- 651
member.

Q. Would it refresh your memory any if I would ask you whether it was as much as $750,000? A. It might have been or might not. I paid very little attention to it.

Q. Was there any sum of money paid by you at the time when this "Foreign Agreement" was cancelled, in consideration of the cancellation of that agreement? A. It seems to me there was.

Q. Do you remember how much that was? A. No, sir.

Q. I will ask you in order to refresh your memory, was it not about $148,000? A. I could not say. It seems to me it was a large amount paid at that time.

Q. Was it about that amount? A. I can not say, sir.

Q. Did you make that payment personally? A. I don't even remember that.

Q. Now I show you Plaintiff's Exhibit 122 to 134 inclusive, and ask you to look at the same and state whether or not they were written by you, or some of them received by you, or by your authority. (Handing to witness.) A. (Examining papers.) Well, I say that that was correspondence
653 in connection with the European agreement, but I do not remember at this time of ever seeing it before. Some of that I know I never saw before, this 122.

Q. That is the one you say you never saw? A. No, I never saw it. It looks like correspondence in connection with the "European Agreement," but I cannot identify any of them, never having seen them before.

Q. Does the E. I. du Pont de Nemours Powder Company have any interest in any powder or explo-
654 sives business in the Dominion of Canada? A. Yes, sir.

Q. How large an interest is that? A. I do not know. We have quite a holding in the Canadian Explosives Company, but I cannot tell what it is.

Q. Did the foreign interests which were formerly represented in this agreement have any interest in the Dominion—in this Explosives Company in Canada, that you have just mentioned? A. Well, I don't know just how to answer that. I do not know who the parties were to the "Foreign Agreement" on the other side, with one exception.

Q. Who was that? A. Mr. Nobel.

Q. Did any of the foreign manufacturers of powder have any interest in the Canadian Company to which you have just referred? A. Yes, sir.

Q. Is that interest a large or small one? A. Controlling, I understand.

Q. How much, 50 or 51 per cent? A. Controlling, I understand, that is my understanding.

Q. That is control, but you don't know how much? A. No.

Q. Do you know how much the interest of E. I. du Pont de Nemours Powder Company is in that company? A. No, sir; that is the question just asked me, I don't know what it was.

656 Q. I was asking you the interest of the foreign company. A. Yes; the foreign company controlled and we have a large interest.

Q. Did you know anything about the terms or any of the conditions contained in that agreement —did you know any of the conditions? A. Not that I recall now.

Q. I show you Government's Exhibit No. 6 in Petitioner's Record of Exhibits, Volume 1, in the same case I called your attention to a while ago and I ask you to look at page 94 and subsequent pages and say whether or not the matter there 657 refreshes your memory as to the contents of that agreement, as far as you know what the contents of that agreement were. (Handing book to witness.)

A. (Interrupting) You want me to look through this book then and see what it says? I can read it through and see what its terms are.

Q. Yes; look it through. A. I have glanced through some of these but I do not say if I recognize them now, I cannot say that, but I will read them through if you wish.

Q. Just read them right now, and refresh your memory from that document which you see before you so as to determine whether there is anything in that which recalls to your mind what you under-

stood to be in this "Fundamental Agreement," which you say you believe existed.

A. (Interrupting) I want to say this, that when you say "Fundamental Agreement," that sounds natural, I have heard that before. I know I have heard about the "Fundamental Agreement." Now you ask me what it is and I do not know. I am perfectly willing to go through this and see if I can identify any of the terms of it as to what I have heard. It may take some little time to read
659 it through carefully to get the information, as I never read the agreement.

Q. Won't you take it and try? A. I will try.

Q. I don't wish to take up time unnecessarily, but I would like to have you, as near as you can, give us some statement as to what you understood to be the terms of that agreement, and if this document will help you, I would like to have you examine it? A. I never saw the agreement and never understood its terms at all.

Q. What is that? A. I never saw the agreement
660 and never understood its terms at all, but I am perfectly willing to go through this and see what it says if you wish me to.

Q. You stated at the beginning of your testimony that there were a number of agreements which you found in existence at the time when you succeeded to Mr. du Pont. Am I correct about it?

Q. You had heard of a number of agreements which were in existence? What was the nature of the agreements which you heard were in existence at that time? A. As I say, I heard they had agreements and as you use the term "the Fundamental Agreement" and you use the term "Gunpowder Association Agreement," I heard of those, and I heard of the "Foreign Agreement."

Q. Did you ever hear of anything called "the "Abstract"? A. No. That is a new one.

Q. The "Compendium of Rules"? A. Yes, I have heard of it.

Q. You have heard of "the Compendium of Rules"? A. Yes.

Q. Did you ever see the "Compendium of Rules"? A. Not that I remember of.

Q. Do you know what the "Compendium of Rules" was for—what its general purpose was?

A. I don't know anything about it except that the language is familiar, but I don't know a thing about it. 662

Q. Do you know Mr. R. S. Waddell? A. Yes, sir.

Q. How long have you known? A. Since about 1885, I guess, or 1886 or 1887.

Q. Did you ever have any business relations with him? A. Yes, sir.

Q. When did you first have any business relations with Mr. Waddell? A. Well, 1885, 1886 or 1887, along there.

Q. At any time subsequent to that did you have any relations with him? A. Yes.

Q. When? A. 1883 or 1882—I mean 1902 or 1903. 663

Q. What was the nature of the business relations you had with him in 1902 and 1903? A. Well, Mr. Waddell was general agent for the du Pont interests in Cincinnati, and had been for many years. I was agent under him in 1888, 1885, 1886 and 1887.

The Court: I understood you to say you were agent under him?

The Witness: Yes, sir.

A. (Continuing.) And then the agency was taken away. In fact, I understood at that time a great many small agencies of the larger concerns were closed and I suppose I saw Mr. Waddell, or his

representative occasionally buying powder until I got into the powder business, which was in 1902. Mr. Waddell was still in Cincinnati, in charge of the du Pont interests.

Q. In 1902, did you have any business relations with Mr. Waddell at Wilmington, Delaware? A. Yes, sir.

Q. State what those business relations were? A. When I got into the powder business I found that there were a great many of the ways in which the
665 business was being conducted, that did not agree with what I thought was up-to-date business methods; and, with my cousins, we outlined a policy for the company, and Mr. Waddell being one of the oldest employees, was offered and given the job of general sales agent, and brought to Wilmington for that purpose.

Q. How long did Mr. Waddell remain at Wilmington as general sales agent? A. About nine months, I imagine.

Q. What did he do then? A. Left us.

Q. So far as your interests were concerned? A.
666 He left us.

D. Did you have any—do you know what he did after he left you, I mean now in a general way, not specifically? A. Well, Mr. Waddell had been dissatisfied for some time——

Q. Just one moment, I am coming to that in a moment, but I would like to know whether after Mr. Waddell left your employ, if you know, whether he entered any other business? A. Well, he went into the powder business for himself, so I understand.

Q. Yes. Well, did you and he have any negotiations? A. Oh, yes, sir.

Q. Of any kind with reference to his going into the powder business? A. Yes.

Q. Were those negotiations in writing? A. Partly.

Q. I show you Government's Exhibits——

The Court: You are using the word "Government" once in a while, Mr. Abbott.

Mr. Abbott: Yes, this is a Government's Exhibit.

The Court: Very well, then.

668 Q. I show you Government's Exhibit No. 285, 286, 287, 288, 288-A, 288-B, 288-C, 288-D, 288-E, 288-F and 288-G, the same being found on pages 2105 to 2127 inclusive, in Volume 4 of Petitioner's Record of Exhibits in the case to which I called your attention some time ago and ask you to examine the same and state whether or not they are true and correct copies of the correspondence which you had with Mr. Waddell? (Handing book to witness.) A. I can answer that without looking at them, Mr. Abbott. I can say that——

669 Q. Will you look at them? A. I can say without looking at them. I can't say whether they are true copies or not, without comparing them. What was the starting number, please?

Q. 285.

By the Court:

Q. You say you can't tell, even after looking at them? A. No, I can't tell whether they are copies or not.

The Court: No use taking up the time then.

A. (Continuing.) Looks like correspondence there between Mr. Waddell and Mr. Hillis and myself, but I could not say whether an exact copy.

By Mr. Abbott:

Q. Will you glance over them hurriedly and state whether there is anything in this document that refreshes your memory as to the matter at all —not refreshes your memory, but in substance the same as the correspondence which you had with Mr. Waddell at that time? A. Well, I really could not tell that without looking at the original cor-
671 respondence. There is a letter here from Mr. Waddell putting in his resignation and there is another letter here with a suggestion for an agreement, and Mr. Waddell did put in his resignation, and there was a suggestion for some agreement; but whether these are the ones or not I could not say.

Q. Have you seen these documents recently? A. Yes.

Q. Did you make an examination of them recently? A. I think so.

Q. Do you know whether at the time when you examined them recently you were able to say
672 whether they were true and correct? A. Well, I think I gave you my answer the other day when I looked over them and stated that these looked like the correspondence between Mr. Waddell and myself.

Q. To the best of your knowledge, the document which I have just asked you to identify was a correct copy of the correspondence and other writings which passed between you and Mr. Waddell at that time? A. I could not say whether correct copies, Mr. Abbott; it looks like correspondence between us.

Q. I will ask you to state how the negotiations between you and Mr. Waddell at that time came to be entered upon? A. Well, Mr. Waddell had been

with the Powder Company many, many years; and I was told, and I think when I first got in the business I saw by his correspondence that he was dissatisfied; and in nearly every letter he criticized the way business was being managed before we got in; and I thought, "Well, now, Mr. Waddell is one of the oldest employees, the oldest man so far as I can learn of the company, and he ought to know the selling end of the line, and it is fair to him to offer him the position of general sales agent," and we offered him that, and we brought him on here and offered him that position——

674

Q. Do you know whether——

Mr. Graham: Let him finish, please.

A. (Continuing.) He went in and for a month or six weeks I thought he was satisfied. After that he didn't seem to be paying a great deal of attention to his work; he was dissatisfied; and I don't know, six or eight months afterwards he said, "Well, my accounting can't be done by the accounting department, and I can't do purchasing by the purchasing department, and that is all nonsense and I am going to resign."

675

Q. During the time——

Mr. Graham: Wait a moment, he has not finished the answer to your question yet.

The Court: Are you through with your answer?

The Witness: No, sir—I beg your pardon, no, your Honor.

The Court: That is all right.

A. (Continuing.) We had a talk with Mr. Waddell and we said, "If you want to go into business, we will join you, we will help you; go in with you."

676 *T. Coleman du Pont—Direct*

Then there was suggestion backwards and forwards and he and our attorney, Mr. Hillis, were to get up an agreement as to how they would go into it and so forth; but these negotiations were never consummated.

Q. Have you finished? A. Yes.

Q. You did have some negotiations with him then for the purpose of entering into business with him? A. Yes, sir.

677 Q. From whom did the proposition for you to enter business with him first come? A. Well, my judgment is to-day, my memory to-day is from Mr. Waddell.

Q. He asked you, about joining him, did he, in the enterprise? A. That is my recollection, sir.

Q. You negotiated, then, with that end in view, did you? A. Well, I don't quite understand your question.

Q. Did you have negotiations for the purpose of seeing whether you could make some agreement to go into this powder business together? A. Yes,

678 sir.

Q. Were these negotiations in writing? A. Partly, and partly verbal, I think.

Q. Tell me what part was verbal, what part was not in writing? A. I don't remember off hand just what our conversation was, but I know we talked that over.

Q. Did you finally reach an agreement? A. No, sir.

Q. Can you state the reason you did not reach an agreement? A. No, sir.

Q. Is that a part of the writing, does the writing indicate why you did not reach an agreement? A. Part of what?

Q. The reason—is that part of the negotiations that were in writing, the reason why you did not

reach an agreement? A. That might be, I would have to look them up to see, sir.

Q. I will ask you to state whether or not the reason you did not finally come to a definite agreement with Mr. Waddell was that you desired to have a controlling interest in the corporation, in the new business, and he desired to have a controlling interest, and you could not agree upon that point? A. Well, as I remember that now, Mr. Waddell wanted control, and for us to take his output and sell it or something of that kind. And I said to 680
Mr. Hillis, "I am perfectly willing that he should control, if in the agreement reached between us it is such an agreement that he will live up to what he says he will do."

Q. How did you want to have that agreement made effective? A. I don't remember.

Q. I will ask you to state whether there was not an arrangement between you, or a proposition that was discussed between you to the effect that you were to have 49 per cent., he was to have 49 per cent., and 2 per cent. of the stock of this company 681
was to be placed in a trust company over which you had control, which was to be surrendered to you in case Mr. Waddell did not manage the business as you thought it ought to be managed? Is that correct? A. Well, it seems to me there were negotiations along those lines.

Q. Just a moment. A. (Interrupting.) But when you say "trust company over which we have control," if you leave out the "control," I would say yes.

Q. I don't understand the last answer. A. You said "trust company over which I had control," didn't you?

Q. I beg your pardon. A. You said "in a trust company over which I had control," didn't you?

Q. Yes, or over which you had control, which is the same, isn't it? A. Maybe I had some interest in it, the same as I have some interest in the Pennsylvania Railroad Company, in its stock.

Q. Well, you recall at this time whether that was a trust company which was known as the Wilmington Trust Company? A. Yes, sir, I recall it to be that.

Q. You had some interest in that company? A. A small interest.

683 Q. You and your associates—that is, the du Pont interests, had a considerable interest in the company, did they not? A. You mean the du Pont family?

Q. Yes. A. I think a good many of them are interested in it.

Q. Did they control, did they have the controlling interest, all of them? A. I think not.

Q. What salary, if you know, were you paying Mr. Waddell at the time when he entered your employ as general sales agent? A. I think ten thou-

684 sand or twelve thousand, but I could not be sure.

Q. You know whether there was any agreement between you for an increase of that salary as time should go on? A. There might have been, I don't remember it.

Q. What was the capitalization of the E. I. du Pont de Nemours Powder Company? A. At what time, sir?

Q. At the time when it was organized? A. Well, as I remember—it is the E. I. du Pont de Nemours Powder Company you mean?

Q. Yes. A. Authorized twenty-five common and twenty-five preferred.

Q. By "twenty-five" what do you mean? A. Twenty-five million shares of common and twenty-five million shares of the preferred was authorized.

Q. Was all of that stock issued? A. No, sir.

Q. What was done with it, how much of it was issued? A. Part of it was issued.

Q. How much was issued? A. I don't remember.

Q. How much of the preferred was issued? A. That I don't remember either. As I remember there was about sixteen million preferred and twenty-odd million common, but I am not sure.

Q. What was done with the sixteen million preferred, who was that issued to? A. Well, I don't 686
know as it was sixteen million that was issued at that time. But it was issued at that time to other companies in exchange for their stock.

Q. What other companies was it issued to? A. Well, the E. I. du Pont de Nemours, the Eastern Dynamite Company——

Q. That is the company you and Pierre du Pont organized? A. No, sir; well, yes, that is one of the companies, yes. Some to the Eastern Dynamite Company and to all the companies that came into the E. I. du Pont de Nemours Powder Company. 687

Q. What was the purpose of the issuance of that stock to those companies? A. In exchange for their stock.

Q. For stock? A. In exchange for their stock.

Q. In exchange for their stock? A. Yes—put your question again, Mr. Abbott, I don't know that I catch it.

Q. Read the question. (Question repeated by reporter.) A. What do you mean by that?

Q. You say you issued this stock, some to the E. I. du Pont de Nemours Company, some to the Eastern Dynamite Company, and other companies. I ask you now what was the purpose of the issuance of that stock to those companies, what did you get in exchange—the common stock of those companies—did you get their stock? A. Yes.

688 *T. Coleman du Pont—Direct*

Q. How much of the stock did you get of the E. I. du Pont de Nemours & Company of which you were the organizer? A. I don't remember; I can't give you any of those figures.

Q. You don't recall as to how much was issued to any one of those companies individually? A. No, sir.

Q. What was done with the balance of the preferred stock? A. Well, that that was not issued
689 stayed in the treasury.

Q. Never was issued? A. No, sir.

Q. What was done with the common stock? A. That that was not issued was left alone.

Q. How much of the common stock was issued? A. I don't remember, as I say; but I do remember this and I can't state surely about it, but about twenty million, a little over twenty million.

Q. To whom was that issued? A. That was issued the same as the other was, to other companies for their stock.

Q. And when you issued, then, a block of stock—
690 of the preferred stock—in any one of these companies, it was accompanied by a block of the common stock? A. Yes, sir.

Q. In what ratio was the common stock issued with the preferred stock? A. I don't remember the ratio. Take the Eastern Dynamite Company or any other company, it will be all the same—one share of Eastern Dynamite Company came into E. I. du Pont de Nemours Powder Company and for it was issued a given amount of preferred and a certain amount of common.

Q. Did either of these companies to whom you issued this stock pay anything for it excepting the stock which they issued to you in return. A. By taking in the stock of any company, the Eastern Dynamite Company, for instance, the stockholders

and owners of the stock in the Eastern Dynamite Company turned their stock in and there was issued in place of that stock E. I. du Pont de Nemours Powder Company both preferred and common stock.

Q. Then instead of stock being issued to the company, it was issued to the stockholders of those companies, is that right? A. In exchange for the stock of that amount.

Q. It was issued to the stockholders? A. Yes, 692
sir.

Q. And not to the company itself? A. No, it was issued for stock in the company to the stockholders of the company.

Q. You were a stockholder in the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. What did you obtain in exchange for any of your stock in that company from the Powder Company? (Objection sustained.)

Q. Will you kindly state how the stock of the E. I. du Pont de Nemours & Company, the company which you, Pierre and Alfred I. originally 693
organized, was paid up?

Mr. McCarter: That we object to. That is covered by the same ruling, I think, which your Honor has already made.

The Court: I think that has been testified to; at least the subject has been testified to.

Mr. Abbott: I think I tried to bring that out from Mr. Pierre du Pont and there was objection made, very strenuous objection, and my reading of the record is that it was not left clear and I wanted to get that fact clearly stated if I could have it.

The Court: Read the question.

(Question repeated by the Reporter.)

Mr. Katzenbach: That was testified to by Mr. P. S. du Pont. He stated that was paid up by the purchase of the properties of the old E. I. du Pont de Nemours & Company, a corporation formed in 1899, the physical property was conveyed to this corporation.

The Court: I am not clear about it, but that is my impression that they issued this stock and the assets were taken over.

695 Mr. Abbott: I think that is what was intended, but I don't think that was clearly shown.

Mr. Graham: It was very clearly.

Mr. Abbott: Is that admitted on the other side?

Mr. Graham: If you want it admitted—it is clearly stated though.

Mr. Abbott: That it is clearly stated, you admit that?

Mr. Graham: We think it is clearly stated.

Mr. Abbott: Do you admit that that is the

696 fact?

Mr. Graham: What is the fact?

Mr. Abbott: That the stock of the E. I. du Pont de Nemours & Company was paid for only with the assets that were acquired from E. I. du Pont de Nemours Company, the original incorporation of the partnership interest.

Mr. Graham: It is perfectly clear on the record that that stock was issued for that physical property from that company with the exception of about one million dollars that was paid in in cash; and then there was twelve million of notes issued in payment.

The Court: That is my recollection.

Mr. Graham: That is all as clear as English can make it.

Mr. Abbott: If you say it is clear and will admit it all right.

Mr. Graham: That is the fact.

Mr. Abbott: We will then understand that much.

Q. Have you any knowledge, Mr. du Pont, of the number of powder companies, of the various powder companies throughout the United States 698 that were acquired by the E. I. du Pont de Nemours Powder Company at the time when you took over the partnership.

Mr. Graham: Wait a minute. He didn't take over the partnership interest, that leads to confusion.

Mr. Abbott: I mean the partnership interest taken over by the company which you spoke of.

Mr. Graham: I didn't say anything of the kind. 699

Mr. Abbott: See!

Mr. Graham: You say "see!" See what?

Mr. Abbott: We don't understand this situation alike.

Mr. Graham: The trouble is you don't try to understand.

The Court: What is the question?

Mr. Graham: The point is this sir, that my objection——

The Court: Let me hear the question first.

(Question repeated by the Reporter.)

The Court: Your objection is that it assumes facts not proven.

Mr. Graham: A little more than that. I

don't care about being proved, but the putting into this record such a multitude of ways of using names leads to confusion. The E. I. du Pont de Nemours Company did not take over the partnership; it took over the E. I. du Pont de Nemours & Company which was a corporation created in 1899.

The Court: And which did take over the partnership.

701 Mr. Graham: Which originally took over the partnership, and with which we have nothing to do and that goes to the objection that he is putting this personally, that "you took over."

Mr. Abbott: Then I understand the admission of counsel to go to this effect, that the stock of the company, which I will call Mr. T. C. du Pont's company for convenience, was paid up by the properties which it acquired from the old partnership interest.

702 Mr. Graham: No, not partnership interest, I never said that; you could never have misunderstood me so because the whole record you have proved previously the contrary. The partnership existed up to 1899.

Mr. Katzenbach: From 1802 to 1899 the partnership existed, and the partnership went out of existence in 1899, and the corporation was formed in 1899 which existed down to 1902.

Mr. Abbott: I know all that.

Mr. Katzenbach: Then T. C., Pierre S. and Alfred I. du Pont came upon the scene and bought up the corporation. Now I have said to you that the record shows that the corporation which they created took

over the assets of that corporation and issued its stock for it, and the twelve million of notes for it, and had one million of stock subscribed for and paid in in cash. Those are the facts.

Mr. Abbott: Counsel says he has taken over the assets of the company which took over the assets of the partnership.

Mr. Graham: Yes.

Mr. Abbott: So far as I can see that is the same thing that we have been inquiring 704
about and that is the admission as I stated it.

The Court: Very well, if that is understood, you are satisfied.

Mr. Abbott: Now, I want to find out from this witness if he knows what those assets consisted of. That is the question I have asked him.

The Court: That is not exactly it. Now, you had better put it in better form if you desire it. What assets? 705

Mr. Abbott: I am asking him about the assets which his company acquired that were formerly in the E. I. du Pont de Nemours & Company which had formerly taken over the du Pont partnership interest.

The Court: Whether he knows what the assets were?

Mr. Abbott: That is all I am trying to find out.

The Court: All right.

A. Well, there were a good many powder mills, I don't know how many, a large number of stocks in other companies.

Q. Do you know where these powder companies were located? A. Some of them; yes, sir.

Q. Do you know what the common stock of the E. I. du Pont de Nemours Company represented so far as value was concerned? In other words did it stand for property, or did it stand for something else? A. Well, the stock of that company and $12,000,000 of notes was issued for all of the assets of E. I. du Pont de Nemours & Company.

Q. This is the common stock I am talking about? A. Yes; there is only one kind, sir.

Q. Of the Powder Company?

707

Mr. Graham: No, you said E. I. du Pont de Nemours Company, if you read your question you will see. That leads to confusion.

A. It is pretty hard to get them separated.

Q. I am inquiring now about E. I. du Pont de Nemours Powder Company. What was the common stock of that company issued for? A. Now, Mr. Abbott, as I said, for one share of the stock of the Eastern Dynamite Company——

708

The Court: He has testified to that.

A. (Interrupting). It is the third time, Your Honor.

Mr. Abbott: I am not asking, if Your Honor please, in general terms, but I wanted to get what he considered was the value of the stock so as to determine the questions I have to ask.

A. Did I misunderstand the question? Read it, please.

(Question repeated by the Reporter.)

A. (Continuing). The last question didn't put it that way. I thought you asked for value. Now,

as I said before, for one share of stock in the Eastern Dynamite Company, if you please, so many shares of preferred and so many shares of common. I will put it this way: For so many shares in the Eastern Dynamite Company, to the stockholder, we are issuing so many shares of preferred and so many shares of common in the E. I. du Pont de Nemours Powder Company, but I have forgotten in what ratio it was.

Q. Do you remember what the total valuation of the physical properties was which you acquired in exchange for the stock of the powder company for the stocks of these other companies? 710

Objection overruled.

A. I don't know it in terms of physical value.

Q. You don't know anything about the physical value, or the value of the physical assets which were acquired in this manner? A. No.

Q. Was there any substantial increase in the value of the physical assets which you acquired between the time when you organized your company —for convenience I call it your company? A. Well, now, which one, the E. I. du Pont de Nemours & Company or the Powder Company? 711

Q. No, the E. I. du Pont de Nemours & Company—at the time when you organized the E. I. du Pont de Nemours Powder Company there was a substantial increase in the value of the physical assets during that period? A. In which company?

Q. (After argument). Mr. du Pont, was there any substantial increase in the value of the assets which you acquired—which the E. I. du Pont de Nemours Powder Company acquired—from the E. I. du Pont de Nemours & Company between the time when you organized the latter company and

the Powder Company? Is that clear? A. Not quite. I don't want to put the question, but is this what you want to say—I mean, maybe you can understand it better than I can.

Q. All right, you ask the question and I will see whether it is satisfactory. A. From the time we acquired the property of E. I. du Pont de Nemours & Company until the time the Powder Company was organized, was there any increase in the value of its assets?

713 Q. Yes, physical assets.

The Court: That is very clear, too, Mr. Abbott.

Q. Yes, all right; I thank the witness for making it clear. (Objection overruled.)

The Witness: Now, that is your question?

Q. Yes, I accept your question. A. If you mean was there a gain in the value of the assets between
714 the time we first bought out the old E. I. du Pont de Nemours & Company until the time the Powder Company was formed, there was.

Q. Well, now, state what that increase was. A. I don't know. Considerable increase, but how much I couldn't tell you.

Q. But you have said there was. You must have in mind what that increase consisted of? A. Our business grows each year; we build additional plants.

Q. What new plants were added in that time? A. I don't remember; it has been so long ago. I don't remember whether we built one or two or more.

Q. Well, did you acquire any new magazines

anywhere? A. I don't recall any, but I should say yes, because each year we grow larger.

Q. You have no knowledge of your own, then, of any specific cases of where the assets were different, have you? A. Oh, yes—you mean a single case? No, I know our total assets are larger.

Q. I am trying to get at now, where the assets were, so that we may form some opinion about it. A. Well, I would have to look that up; I couldn't tell whether it was a mill in the north or a mill in the south or a magazine or stocks—— 716

Q. What, in your judgment, was the difference in value of those additional physical assets? A. I couldn't tell you.

Q. Have you any idea? A. No.

Q. Was it $500,000? A. Well, I said I couldn't tell you.

Q. You cannot tell anything about it? A. It has been a good while ago and I would have to look into it very carefully.

Q. Now, what dividends did you pay the first year of the E. I. du Pont de Nemours Powder Company's existence? 717

Objection overruled.

A. I do not remember what dividends——

Q. What was it the second year? A. I do not remember.

Q. What was it the third year? A. I do not remember. A year ago——

Q. Wait a minute, I do not want "a year ago," please, at this time. What was it the fourth year? A. I do not remember at all.

Q. What was it the fifth year? A. I do not remember.

Q. Now that carries it down to 1908. Now, then,

can you tell what the total amount of dividends was that were paid by the E. I. du Pont de Nemours Powder Company during the years 1903 to 1908?

Objection overruled.

A. Not without looking it up.

Q. Do you know the firm of Harvey Fisk & Sons, 62 Cedar Street, New York? A. I know they are there and I know one of the members or maybe
719 more.

Q. Did they at any time ever represent you or the E. I. du Pont de Nemours Powder Company with reference to your stocks and bonds? A. It seems to me that Mr. Pierre du Pont had some arrangement with them about some of his——

Q. Now, I will ask you to look at a circular which purports to have been issued by that firm and refer you to the third page, which contains what purports to be a letter written by the E. I. du Pont de Nemours Powder Company and ask you to state whether you know anything about the contents of
720 that letter? This is with a view to assist you in answering the question which I have asked you. A. Do you want me to read it all?

Q. No, just examine it for your own information.

The Court: Refresh your memory on the question of dividends.

A. Well, I should say this was—was what the dividends were.

Q. I will ask you to state from that what the dividends were.

The Court: Not from that, from whether anything in that, recognized by him as au-

thority, refreshes his memory, his recollection.

Mr. McCarter: We object to that.

Mr. Graham: So that he can speak from his independent recollection.

A. Now, as I read here the five per cent. dividend upon preferred stock had been paid, now I was thinking, more from common stock, as I remember it that has been paid from the start and it is because the other dividends—— 722

Q. Are you able to state whether or not that statement as set forth there is a correct statement of the dividends paid by the E. I. du Pont de Nemours & Company? A. I am not.

Q. You do not know anything about that of your own knowledge? A. No.

Q. Do you know of your own knowledge about the dividends that have been paid by the du Pont Company at any time since its existence down to 1908? A. Well, I know it has paid dividends and I know it has paid 5 per cent. on its preferred, but I couldn't tell what it paid on the common in any year, until the last year or two.

Q. Do you know what the total amount of the dividends was that they paid between the years 1903 to 1908, inclusive? A. No, sir; I don't.

Q. Do you know what the common stock of that company was worth in the open market? (Objected to and objection overruled.) A. In 1903? I don't.

Q. Do you know what the common stock was worth in any of the subsequent years—without asking you in detail? A. Yes, I know that—well, I will say within—just before the Government's suit—a decision was rendered—it was about $200.

Q. About $200? A. Yes.

Q. Can you state what it was in 1904? A. No, sir.

Q. In 1905? A. None of those years.

Q. None of those years. Now was the common stock of the Powder Company increased after the first issue? A. The common stock?

Q. Yes.

The Court: Of the Powder Company?

Q. Of the Powder Company? A. Well, what do you mean by the first issue?

725 Q. You have stated that it wasn't all issued at first? A. No.

Q. Was there any time during its existence when it was all issued? A. No, not that I know of.

Q. Was there any time when it was increased? A. As the various companies came in it was increased until—the Eastern Dynamite came in first, and another company came in afterwards, it was increased to take in the other company.

Q. By increase, do I understand that you increased your capital stock at any time, or that you simply increased your issued stock? A. Issued

726 more stock, I thought that was what you meant by "increase." It has never been increased that I know of.

Q. Did there ever come a time when all the stock of the Powder Company had been issued?

The Court: He said "no."

A. Well, now, wait; I ain't so sure about that; I don't know; I have an idea that there was a change, but I am not sure.

Q. I believe you stated you have been president of the company ever since its organization? A. Yes, sir.

Q. Will you examine this same circular to which

I called your attention a moment ago, under the head of "Capitalization," and state whether it refreshes your memory in any way concerning the amount of stock that was issued from time to time? A. I thought it was twenty-five—that is the only place. This says thirty was authorized, and twenty was outstanding. I thought it was twenty-five that was authorized and a little under that—a little under that—over twenty outstanding.

Q. Do you wish to change your testimony in that regard in any respect? A. This says thirty thou- 728
sand was authorized—this statement says there was thirty million authorized of common and twenty-five preferred. I thought it was twenty-five of each kind. This is twenty-eight outstanding.

Mr. Graham: Do you know whether that is correct or not? A. I don't.

Mr. Graham: Well, then, don't say anything about it. You are handed that paper to refresh your memory and to be able to state as your independent recollection what 729
the fact is. Now if you can do that, do it.

A. I started off by saying this paper states that—

The Court: You musn't do that, you see the paper can state for itself. He simply handed you a document and asked you whether it refreshes your recollection.

A. No, I must have been wrong if that document is right.

Q. Now, the other day when you were on the stand I was questioning you with regard to some negotiations which you had with Mr. R. S. Waddell, and I understood you to say that those negotiations

finally came to an end and you did not make any arrangement; now do you know what Mr. Waddell did after that, after he left you, do you know what he undertook to do? A. I understood he went into the powder business.

Q. Do you know whether or not after he left your employ the E. I. du Pont de Nemours Powder Company or any of its officers put detectives on his track? A. Well——

731 Q. Will you answer that yes or no, please? A. I understand there were.

Q. Those detectives from time to time made reports, did they, of their actions? A. I so understand .

Q. Do you know where those reports are? A. I don't.

Q. Did you see any of them yourself? A. Not that I remember of, I think they were addressed to me; I don't remember that I ever saw any of them.

Q. Now, what agency, if any, was employed to
732 send out those detectives? A. I think it was Pinkertons.

Q. And do you know where that agency was located? A. No, sir.

Cross examination by Mr. Graham:

Q. Mr. du Pont, will you look at these papers (handing witness papers) and say whether or not they are the reports of those detectives? A. I couldn' tell; I never seen them.

Q. They are addressed to you? A. They might be, but I never saw them.

Q. And covering the period of time from February 3d to February 26th? A. About three weeks.

Mr. McCarter: What year?

Q. Of 1903. What was the occasion of putting the detectives—— (Objection overruled.)

Q. Mr. du Pont, just answer the question, why was it done? A. Some of our people thought that Mr. Waddell——

Mr. Abbott: Now, if your Honor please

The Court: You see, you can tell why it was done, but cannot what led you up to it. 734

A. Why, it was done because our people felt that some of our employees were trying to be gotten away from us by Mr. Waddell, and after three weeks they found that it was not true they took them off.

Q. In order to see whether he was taking away any of your employees? A. Yes.

Q. When you found that wasn't true they were taken off. Mr. du Pont, you were ill for quite a long time, were you not? A. Yes; I haven't been doing much work for the Powder Company for about a little over four years. 735

Q. And during that time Mr. Pierre S. du Pont has been acting president? A. Acting president; yes.

Q. And you have been giving the matters but little attention? A. Very little indeed.

Q. Now, I want to just clear up two or three little matters and direct your attention back to the beginning of your connection with the powder business. As I understood you, that commenced in 1902? A. Yes, sir.

Q. That is right, is it? A. Yes.

Q. I understood you to say in answer to Mr. Abbott that in 1885, I think it was, you sold some powder to a Mr. Waddell? A. I had a little agency down in Kentucky under Mr. Waddell.

Q. Was that in connection with some coal operations there? A. Yes; I was in the coal mining business then; assistant superintendent of the coal mine.

Q. And you sold some powder—— A. In this little agency; yes.

Q. Had you prior to 1902 any connection whatsoever as manager or owner of the powder plant or any of its works? A. In no way whatever, except this agency, when I was quite a young man.

737 Q. Now, at the close of the session yesterday I was asking you about the agency that you had down in Kentucky, and the record seems to report me as asking you whether you did not sell some powder to Mr. Waddell. That is a mistake. You were selling powder in a small agency in connection with your coal operations? A. Yes, sir.

Q. Down there? A. Yes, sir.

Q. And that was in what year? A. 1886, 1887 and 1888 in there, about that time.

Q. About 1886 or 1887? A. Yes.

738 Q. And then we were following that up by showing that you had no connection with the powder business other than that until you made this purchase, is that correct? A. That is right.

Q. Now, this purchase was made in 1902? A. Yes.

Q. Now, what two gentlemen were associated with you in making that purchase? A. My cousins, Pierre and Alfred du Pont.

Q. Pierre and Alfred du Pont and yourself made the purchase? A. Yes, sir.

Q. Now, in the record in answer to Mr. Abbott's question I find you recorded as saying this: "He (referring to Eugene du Pont, your deceased cousin) was president of the E. I. du Pont de Nemours & Company when I took his place." Is

that correct or not? A. No; that is not quite correct, because he was president of E. I. du Pont de Nemours & Company, and that is the concern that we bought—the assets of the concern that we bought.

Q. Now, is it not the fact that he was dead before you began any negotiations? Is that not so? A. Yes, sir.

Q. And it was in consequence of his death, that the other owners were thinking of making a sale of their property? A. Yes, sir. 740

Q. Your attention was called to it; I think you stated to Mr. Abbott, by Mr. Alfred du Pont. A. Yes, sir.

Q. And then you and your other cousin joined him in making a purchase? A. That is right.

Q. Now, what you bought from the E. I. du Pont de Nemours & Company of 1899 was its assets, was it not? A. Yes, sir.

Q. You never were in any way connected with that corporation, were you? A. No, sir; that company was dissolved.

Q. Dissolved. And you and your two associates 741 organized a new E. I. du Pont de Nemours Company as it was? A. Yes.

Q. As called? A. Yes, sir; that is right.

Q. And the name subsequently being changed to the name of the old company which had been dissolved? A. Yes, sir.

Q. E. I. du Pont de Nemours & Company? A. After its dissolution, we put the "&" in our new name.

Q. Now, that was the new company which brought you first in touch with the powder business and with these du Pont interests in 1902? A. Yes, sir.

Q. Now, you have stated that you knew of an

association and attended two or three of its meetings? A. Yes, sir.

Q. Did you know of the existence of that association before your purchase of this property? A. No, sir.

Q. Didn't; it was one of the things that came as a burden on the property when you took it, was it not? A. Yes, sir.

Q. Now, you say you attended two or three of
743 those meetings and ascertained what was, as far as you could—noticed what was going on, and you were dissatisfied with it—I think your language in answer to Mr. Abbott was that it appeared like a farce, nobody did anything or lived up to anything. Now, what did you do in consequence of that; did you continue with them or cut loose from them? A. Well, it was broken up shortly after that; we paid no attention to it, as I say, I thought the thing was a farce as soon as I had been there three or four meetings.

Q. You abandoned your connection with it and
744 it was dissolved, was it not? A. Shortly after that I paid no attention whatever to it, because nobody else did.

Q. Yes, exactly; now, in answer to a question that was rather ambiguous and perhaps it seems so to me, you made this answer: "Oh, yes; when I came in the powder business I took the place of my cousin and there were quite a number of companies in which the du Ponts were interested. My cousin was Eugene du Pont." Now, that refers, does it not, to the time that you have just mentioned after your purchase of this property? A. Yes, sir.

Q. Now, the taking of the place of Eugene du Pont was merely filling some of the vacancies that existed in some of the subordinate companies? A. Yes, by reason of his death there were vacancies and I was elected to fill these.

Q. Those existed when you took the property over? A. Yes.

Q. And they were simply filed in the usual course of business? A. Yes.

Q. And were you elected to fill some of those places? A. Yes.

Q. You are recorded on the record as saying "We purchased that company." The context showing that the answer referred to the E. I. du Pont de Nemours & Company of 1899. I understand you to say now that you did not purchase the company, 746
but you purchased its assets? A. We purchased its assets, everything they had.

Q. You never bought the stock of that company? A. Oh, no; the company was dissolved.

Q. Yes; you were asked by Mr. Abbott were there any others associated with you three gentlemen in organizing the E. I. du Pont de Nemours Company. You answered, "Oh, yes; the old board and the old people had a majority on the board of directors." Now, in point of fact, was there anybody associated with you in organizing the E. I. du Pont de Ne-
mours Company, the company that bought over the 747
old 1899 company—— A. No, sir.

Q. ——other than Pierre S. du Pont and Alfred I. du Pont? (Objection overruled.)

Q. Was anybody but those three associated with you in the organization of that company? A. Well, the company was formed by——

Q. Yes or no, first, then give your explanation, afterwards. Was there anybody? A. No.

Q. Well, now, what is the explanation? A. The papers were drawn by Mr. Hillis—he was among the other attorneys—in the formation of a company. Now, that company bought out the E. I. du Pont de Nemours & Company, bought its assets out. One of the terms or the conditions of the payments

748 *T. Coleman du Pont—Cross*

was that the old people would have a majority on the board of directors until such time as we had made certain payments.

Q. Now, is that what you meant when you answered Mr. Abbott and said, "Oh, yes, the old board and the old people had a majority on the board of directors." A. Yes.

Q. They were to be on the board as a condition of the purchase until after certain payments were made so as to look after and protect their interests?
749 A. So they could control—stop anything that was going wrong.

Q. Then, I understand you to say distinctly they had no interest in organizing the new corporation whatever? A. No, sir.

Q. Then, in another part of the record—"when I got into the powder business in 1902 I found there was a good many organizations and agreements and companies of every kind and description. In fact, I think there were over a hundred that were controlled by du Pont, and this was one of those
750 organization." Now, in the context you were speaking immediately before that of this association. A. What was the question, Mr. Graham?

Q. I haven't the question here; I am just taking the context and the answer. I can turn to it if you want it, the previous questions were with relation to the association. Now, I ask you what you meant by that answer, whether it meant, and this was one of those organizations that had been taken over or whether you meant that it was an organization controlled by du Pont? (Objection overruled.)

A. You mean that Trade association——

Q. Yes. A. That wasn't controlled by anybody; that was one of the organizations that I found with this company.

Q. So that as a matter of fact the du Ponts did

not control that association, whatever it was? A. Oh, no; not that organization.

Q. Each member of it, if there were members spoke for himself? A. Yes.

Q. Now you stated in your answer to Mr. Abbott: "I found that before I had been to one or two meetings that nobody lived up to the prices they made; it was more of a farce than anything else; it seems to me there were some allotments made at those meetings." In other words, they went there and made agreements, but did not live up to 752 them? A. Yes.

Q. Then Mr. Abbott asked you this question: "Now what steps did you take if any, or did you think necessary to take in order to overcome that situation." "Well, the first steps that were taken by me and those associated with me were to put all the du Pont interests into one concern. In that way we formed the company under the laws of New Jersey first, the next steps were that that company took in the various concerns that were controlled by the du Pont interests, and the third 753 step was the organization of the New Jersey company which is the defendant." Now, at the organization of those companies did any part of those three steps that you have described have anything to do with the trade association of which you had been speaking? A. No; paid no attention to that whatever.

Q. In other words, you abandoned that, and this was the method that was taken to put your own properties in order in the new corporation? A. Yes.

Q. When you came into possession of these properties, as I understand it, and I am asking you if it is correct, among the assets that you took over there were about 60 per cent of them in stocks

in the various companies, is that correct? A. Well, something over fifty I should say about sixty.

Q. I don't care for the amount, but it was a large amount? A. Over fifty.

Q. Yes; and in most instances it represented a minority holding? A. Yes.

Q. Now, did you consider that a desirable or safe condition in which to hold your interests in those properties? A. No, sir; I didn't, and it was for that reason——

755 Q. What did you do to correct that situation? A. That was when I tried to get them all into one company.

Q. Now did the Laflin & Rand Company control stock in the same corporations that the du Pont had interests in? A. Yes; they were partners and had formed the most of these companies, had been formed by the du Pont and Laflin & Rand together, and they were partners in a great number of the companies, oh, I should say eighty or ninety per cent of them.

756 Q. That is to say, in the old days before you had any connection with this business, the Laflin & Rand interests and the du Pont interests acted as partners in exploiting new companies and in creating new corporations in different parts of the country? A. Yes.

Q. And each of them took stock in the new companies that were started; is that correct? A. Yes, sir.

Q. Now, as I understand, at this time there was a condition similar in the Laflin & Rand Company's management to that which existed in the du Pont management, the lack of a business head—and were they at that time endeavoring to sell their property. A. Well, I take it so, because we bought it.

Q. Well now then in buying that other interest,

it enabled you to protect your minority interests in these various companies, did it not? A. Yes, sir. By buying the L. & R. it gave us control of most of them.

Q. Before taking that step did you confer with counsel as to whether it was a legal and proper step to take? A. We did.

Q. And were advised that it was? A. Yes, sir.

Q. And you made this combination of these two interests in the old company, simply putting them together in the new company which you had formed, 758
the E. I. du Pont de Nemours & Company? A. Yes, sir.

Q. Now when the E. I. du Pont de Nemours Powder Company was formed, which is the defendant in this case—— A. Well now Mr. Graham, before that those other companies were not all taken into the E. I. du Pont de Nemours Powder Company.

Q. Yes; you are quite right; I will correct that. A. I thought you said Powder Company there; there are so many of these companies that you 759
have to be very careful.

Q. The Laflin & Rand were taken over by the Delaware Securities Company? A. That is right.

Q. And some interests in California were purchased by the California Investment Company? A. Yes, sir.

Q. Now then at that time these various interests were in existence when the deal was made between the E. I. du Pont de Nemours Powder Company and these interests by which they were all taken over to the Powder Company, to the big company? A. The present defendant.

Q. So that when the Powder Company came into being it obtained a large accession of assets beyond what your company obtained when they bought out the 1899 assets? A. Oh, yes.

Q. And that went into this new company, the Powder Company? A. Yes.

Q. Now at that time, as I understand it, after the Powder company was formed and after 1903 you had no connection whatever with any trade association or organization of any kind? A. None whatever.

Q. You were simply conducting the business, this consolidated business, that had come to you? A. Yes, sir.

761 Q. And I understood you to say that you knew nothing of the existence of these trade agreements at that time you made the purchase? A. Not until after the purchase.

Q. And then as soon as you could, you got rid of them and consolidated your properties for the protection of your interests and went on with your business, is that right? A. Yes, sir.

Q. When you looked over the field and found yourself in possession of these properties, what arrangements, if any did you make or what plan did

762 you adopt with reference to saving in freights? A. Well, when we got into the powder business it had been the companies that we purchased, or our predecessors had very little organization, they only had five or six clerks in their main office and didn't keep an up-to-date cost sheet. They left nearly all of their business to their agents through the country, devoting their time and ability to making good powder. In looking over the business situation I found there were a good many chances for saving. One that comes to my mind since you suggest freight is that powder was shipped from Hazardville, Connecticut, to San Francisco, Arkansas, in every portion of the United States. The Hazardville brands being only made there, the Hazard powder wherever it was sold was shipped

from Hazardville. We immediately adopted the policy of shipping from the nearest mill, which saved an enormous amount of money. The reason the saving is larger in this business than in any other is because powder is a dangerous freight and they charge very high rates, I think it is double first class.

Q. So you adopted the rule of delivering your powder from the mill nearest the point of consumption and discontinued this old system of shipping from Hazardville, Connecticut, probably out to the Pacific coast? A. Oh, we shipped a good deal to the Pacific coast. 764

Q. So that in point of fact the Hazard Company—— A. Well it made such a difference that they got out of the blasting powder business—I don't mean they got out of the blasting powder business, but they didn't make any blasting powder at that mill.

Q. How many offices did they maintain in the old days in Wilmington, about? A. The extravagance there was that many of these companies maintained offices in many cities, I think there was six in New York; two or three in Chicago; two or three in Cincinnati; two or three in St. Louis; two or three in San Francisco; and I at once took steps to do away with all of those offices and bring everything to one office at Wilmington. 765

Q. Having consolidated the assets into one company, you consolidated the machinery for selling the products? A. For selling.

Q. And did away with a whole lot of offices in New York and other points throughout the United States, is that correct? A. The Hazard Powder Company had large administrative offices in Chicago which I thought was an extravagance, and they were all consolidated and brought to Wilmington

and the selling agencies consolidated and that resulted in a very great saving.

Q. I want to ask you, Mr. du Pont, do you know whether or not there were other companies came into existence after the abandonment of this association in 1903 of powder companies? A. Well, it seems to me that soon after I got into the business in 1903 or 1904 or 1905, along there in the early days, there were a number of companies started.

767 Q. Besides the Buckeye? A. Yes, sir.

Q. And are the others all in business still? A. So far as I know they are all running.

Q. Now, you were shown some portions of the Luthy correspondence yesterday. I want to show you some more of it for identification. I show you a letter dated December 14, 1906, purporting to be a letter from Mr. Ferd Luthy to Mr. T. C. du Pont and ask you if you can identify that as part of this correspondence. (Handing paper to witness.) A. Well I could not say that certainly, but it looks as though it was a letter which came

768 from Mr. Luthy.

Q. You identify it as well as you identified the ones of Mr. Abbott, that he showed you yesterday? A. Just in the same way, in fact I cannot be sure I saw them.

Q. Here is a letter dated October 4, 1907, from Luthy to T. C. du Pont, do you make the same answer in reference to that? A. No, sir; this has my own handwriting on it, I must have seen this before.

Q. You identify it by your own initials? A. Yes; I referred it to Pierre and this all went into his office, and the enclosures with it, these circulars apparently.

Q. Were these papers included with the letter

when you received it (indicating)? A. I should say they were; I cannot swear they were absolutely the same papers, they look to me as if they were.

Q. You know of no change in the document since you received it? A. None whatever.

Q. Now I show you a letter dated October 15, 1907, from the same party addressed to you. (Handing paper to witness.) A. Well, this is in the same category as those of yesterday.

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Q. Looks as if it was received by you? A. Looks as if it were; yes.

Q. Your best recollection is it is part of the same correspondence? A. It is.

Mr. Graham: I want to have these marked for identification.

(Same marked Defendant's Exhibits F, G and H for identification.)

Q. Now, when you spoke in your testimony with reference to Mr. Waddell's negotiations with you about the powder business, you spoke of two per cent. that was to be put into the Trust Company. What was that—what was said that indicated what that was done for? A. Well, my experience had been that the du Ponts had put a great deal of money into one or two companies, all of the money into the concern, and were unable to control it. Mr. Waddell wanted control of this company that we were talking of forming, and I said, "Well, I have no objection to that, if we can make a contract between us." And the two per cent. was to be deposited as a guarantee on the part of Mr. Waddell, that he would carry out his part of the contract.

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Q. In other words, the stock was to be divided on the basis of 49 per cent. to du Ponts and 49 per

cent.—or 51 per cent. to Waddell, 2 per cent. of which was to be deposited in the Trust Company as a guarantee of his carrying out the terms of the undertaking? A. I don't know—51 per cent.—that was 49 and 49 and the other 2 per cent. was to be deposited by Mr. Waddell so that by his consent it was to be a guarantee of carrying out his part of the contract.

Q. That is what I said, that is so? A. We were responsible.

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Mr. Graham: That is all.

Redirect examination by Mr. Abbott:

Q. Referring to the last inquiry of Counsel concerning your arrangement with Mr. Waddell, and this 2 per cent. proposition, was that arrangement ever stated or indicated in writing? A. It may have been, I don't know; I think likely it was, but I don't know.

Q. Have you in any wise refreshed your memory
774 concerning the matter of negotiations which you had with Mr. Waddell at that time? A. No, sir.

Q. Since giving your testimony the other day? A. Not since then.

Q. I will ask you again in view of your statement concerning this matter, to examine exhibits 285 to 288-G and state whether or not the matters set forth in those exhibits contain the substance of the negotiations between yourself and Mr. Waddell, as near as you can recall; not whether those are true and correct copies as I asked you before, but whether the matter so set forth is substantially what transpired between you at that time (handing book to witness)? A. Before reading over this I might say that Mr. Waddell and I had several conversations

on the subject, and he and Mr. Hillis were to get up the papers.

Q. And you afterwards saw some of those papers, did you not?

Mr. Graham: Is the other question withdrawn?

Mr. Abbott: No, not at all; the question is interpolated and I wanted to bring down this question that the witness spoke of.

776

A. Just about the other, let me finish on the other part first so we will get straightened out on it.

Q. All right, proceed and answer the question. A. You started with that number of exhibits?

Q. It begins there (indicating) and runs on continuously. A. Well, I think that is 285. 285 is a letter written by Mr. Waddell to me.

Q. Now, will you look at the next one, please? (Witness examining book.) A. That next one looks as if it were part of a memorandum of correspondence or talk. And 287 is next (examining further). 777
I don't remember seeing 287 until the other day. 288——

Q. What is it about 288? A. I just called it off to you; I am reading it now.

Q. All right. A. That seems to cover part of the talk; I think that paper was drawn by Mr. Hillis. It says Hillis, note given by T. C. du Pont. 288-A—that talks about further organization of the company, and I recognize some features there. 288-B, a letter from Mr. Waddell to Mr. Hillis. Mr. Waddell says, "In presenting the proposition which you have now put in formal shape," I think that is part of the correspondence. 288-C—I think I recognize that as part of the negotiations, I mean the substance of it; I don't say it is a copy. 288-D—same

answer. That was the end, wasn't it, how far, 288-what?

Q. 288-G was the last, I think. A. Same answer to 288-E, same to 288-F and same to 288-G.

Mr. Abbott: Now, I will ask to have those documents marked for identification.

(The same marked Plaintiff's Exhibit 41 to 51, inclusive, for identification.)

779 Q. You answered Mr. Graham's inquiries with regard to a number of new companies which had come into existence not controlled by the du Pont Powder Company since it came into existence. Now, what companies were those? A. Why, the United States, the Senior——

Q. Who is the second one? A. Senior. Excelsior. Those are pretty bad names; and then the Egyptian. The Buckeye. I think the Jefferson.

Q. Jefferson? A. Yes, I think the Jefferson. A new mill at Thebes, that is the Miami Powder Company.

780 Q. That is a new mill? A. Yes, and I think the Equitable built one at Fort Smith, Arkansas. That is the United States, Senior, Burton, Excelsior, Egyptian and Jefferson. It may be two or those are one, I am not sure.

Q. Which two do you think are one? A. Burton Company, one of the others, the Jefferson may be the same as the Excelsior. There are six or seven there that I recall now.

Q. Where was the Senior Company located? A. Somewhere in Ohio, Southern Ohio.

Q. Do you know how large a plant that was? A. No, sir.

Q. You don't? A. No, sir.

Q. Where was the United States Powder Plant

located? A. I think it was in Ohio, or Western Pennsylvania; I am not sure.

Q. Do you know how large a plant it was? A. No.

Q. Did you at any time have any interest in the United States Powder plant? A. Not that I know of.

Q. I will ask you whether or not the United States Powder plant had a large interest in that was not owned and controlled by the Equitable Powder Company? A. I don't know, it might be. 782

Q. Is not the E. I. du Pont de Nemours Powder Company a 49 per cent stockholder in the Equitable Powder Company? A. Yes, sir.

Q. So that if it is true that the Senior Powder Company—that a large interest in that is held by the Equitable Powder Company, then you would have an indirect interest in that company, would you not? A. Well, I say they might have acquired an interest in it. I don't know about it.

Q. Now, then, the Egyptian Powder Company, where is that located? A. I think in Indiana or 783 Illinois.

Q. Do you know whether you had any interest in that plant? A. I think that the Equitable acquired interest in that, recently.

Q. So that you would have an interest in the Egyptian through your 49 per cent interest in the Equitable Company? A. That is the Powder Company?

Q. Powder. A. Very strong one.

Q. You have 49 per cent interest in the Equitable plant? A. Yes, sir.

Q. If the Egyptian is owned by the Equitable plant, you would have your interest in the Egyptian, would you not? A. We would today, I think, since you mention it, the Equitable had acquired

an interest in the Egyptian, and in the Buckeye.

Q. Now, this Excelsior plant, where is that located? A. That is in the Middle West somewhere, near the Mississippi River, I think Missouri or Arkansas.

Q. Do you know how much of a plant that is? A. No, sir.

Q. The Jefferson plant, where is that located? A. In the Mississippi Valley.

Q. That is the same—any relation between that
785 and the Excelsior? A. I say there may be some relationship between some of those companies, but I am not sure.

Q. The Burton plant, where is that located? A. In Ohio, I think;; it is in Ohio.

Q. Did you have any interest in that in any way? A. Not that I know of.

Q. Directly or indirectly? A. Not that I know of.

Q. Any arrangement with them to purchase their product? A. Not that I know of.

786 Q. Or take any of their output? A. There may be an arrangement, I don't know; I would not know it if there was.

Q. You would not? A. No.

Q. During this same period that you speak of, did not the du Pont Powder Company itself construct a large number of new mills? A. Well, two or three, I should say.

Q. Can you state where their new mills were constructed? A. Alabama, de Nemours, West Virginia, and up in Minnesota; they are now building one in Washington.

Q. In Washington? A. Yes, sir.

Q. Did you own an interest or did you construct a plant in the State of Washington at any time during 1903 to 1908? A. I think it was started in that

period some time, it might have been started the latter part of that period.

Q. Did it reach a point where you did any manufacturing during that period? A. I don't think so.

Q. Where is that plant located? A. Why, in Puget Sound.

Q. Did you build a plant in Colorado? A. I think there is one being built there now.

Q. I am speaking now during the period 1903 to 1908? A. I don't think so.

Q. Did you build a plant in Wisconsin, during 788
that period at Barksdale? A. I think we did.

Q. Did you build a plant in West Virginia near Bromwell? A. That is the de Nemours plant.

Q. I don't know the name, but is that the place? A. I said we built one in West Virginia and I think it is the deNemours plant; I don't know for sure.

Mr. Graham: When?

Mr. Abbott: Between 1900 and 1908, I understood that is the period you inquired about.

Mr. Graham: I didn't understand that his 789
attention was directed to it.

Q. That is the period I am asking you about, I understood that to be your answer to the question propounded by Mr. Graham. A. Yes, sir, that is right.

Q. You answered Mr. Graham's interrogatory with reference to the steps which you took about organizing these various companies and taking over these various assets that you had been previously advised by counsel that you could legally do that? A. Yes, sir.

Q. Do you know what the Court decided was the legal effect of the steps that you took at that time

to take over these organizations and the subsequent steps that you took in the organization of the E. I. du Pont de Nemours Powder Company? A. I knew that the Court decided that our organization was a monopoly.

Q. Well, but did you know what steps the Court took with reference to that matter, after it reached that decision?

791 Mr. Graham: I object to that as irrelevant, incompetent and immaterial.

The Court: I sustain your objection to that.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

792 Q. Now, you stated that you knew that the du Pont Company did not control the Association, the former Association that we called the Gunpowder Trade Association; that that was one reason why you desired to break away from it? A. No, sir.

Mr. Graham: He did not say that, you are repeating something—as if he had understood it, that is the vice in your question that I tried to correct in my examination.

Mr. Abbott: If there is any vice in that the witness may correct it. Will you state just what you did say.

(Question repeated.)

A. No, sir.

Mr. Graham: I object.

The Court: I think so, I think your objection is good.

Mr. Abbott: I have practically withdrawn the question and ask the witness what it was he did say about the matter.

Q. As I recall your testimony to Mr. Graham, you stated that the du Pont company did not control the Association or interests which were associated together as the Gunpowder Trade Association. Am I correct about that? A. I told Mr. Graham that the du Pont concerns did not control the Trade association. 794

Q. Upon what did you base that statement—your own knowledge? A. Yes, sir.

Q. You did; now, I will ask you to state what companies or associations formed the Gunpowder Trade Association? A. I couldn't tell you.

Q. Well, then how can you state of your own knowledge whether they controlled that association or not, unless you know what companies were in that association? A. Because I know we did not at that time. 795

Q. Why do you know you didn't? A. I don't know; I know it is daylight——

Q. Now, I will ask you as a matter of fact, if you know anything about the companies that were in that association? A. Only in a general way.

Q. Only in a general way. Now, I show you what purports to be a list of the companies that were in that association at the time you acquired the interests in 1902 and I will ask you to look at that and state whether or not you have any means of refreshing your memory as to what companies formed the association known as the Gunpowder Trade Association? A. I see in this list——

796 *T. Coleman du Pont—Redirect*

Mr. Graham: Wait a minute. The witness' attention is directed to the book, he is asked whether or not that refreshes his memory as to who formed the association. That is the question. Don't read what is in the book.

The Court: After reading that, has your recollection——

797 A. I see some companies here that I know were in the association.

Q. Will you read the names of the companies that you know were in the association? A. I don't know positively that any of them were in there except——

The Court (after objection and argument): You understand, Mr. du Pont, you are not merely to give us what that record shows, but if that record contains anything that refreshes your recollection upon the
798 subject, you may use that for that purpose. If you can testify without looking at the book you may do so, but if your recollection of the names of the concerns that are represented there is not sufficiently distinct for you to give the names correctly, you may use that book for that purpose.

A. This is the way I look at it, I could call out, remember some of the concerns that were in there. I might forget some of them. If I saw the names in this book I might remember that they were members of the Association.

The Court: That is the purpose of handing you the book.

A. Your question was "how many?" wasn't it?

Q. No, I want the names? A. The E. I. du Pont de Nemours & Company, Sycamore Powder Mills, Hazard Powder Company, Laflin & Rand Powder Company, Schaghticoke, Oriental, American—no use in reading it all out in full?

(After argument.)

A. Boston, Miami, King, Ohio, Chattanooga, Equitable, I don't know that those others were.

Q. Will you state whether any of the companies whose names you have just given to us as the names 800
of companies which you recognized as having been members of that Association were afterwards acquired by you or the interests which you represented and afterwards came into and became a part of the E. I. du Pont de Nemours Powder Company? (Objection overruled.) A. What do you mean by "after"? I believe you used afterwards two or three times. Couldn't you ask two questions and make it clearer.

Q. Do you understand the question? If not, I will repeat it. 801

The Court: I take it that "afterwards" means after the Trade Association was abandoned.

A. Then I will put it this way: Some of those names that I read have since come into the Powder Association.

Q. Now I will ask you to read or to give a list of the names of those corporations whom you say afterwards came into the E. I. du Pont de Nemours Powder Company. Can you do it without referring to the book? A. Well, if the names were called off I could say yes or no.

802 *T. Coleman du Pont—Redirect*

The Court: Would it help you to look at that same list?

The Witness: It would.

The Court: You may do that.

A. Now, that is that came in afterwards were not controlled by the du Ponts beforehand?

Q. I am not asking you that.

The Court: That is the question now.

803 Mr. Abbott: He is drawing his conclusions; I propose to follow that up a little further. That is a matter that is a subject of inquiry.

A. Well, your question now is how many of those names have I called off are now in the concern——

Q. No, how many of the names of those companies whose names you have called off—how many of those corporations were afterwards acquired or taken over by the Powder Company? A. You mean the stocks taken over or the assets or what? I don't

804 want to get wrong on that again.

Q. I don't know how to make that question more clear.

The Court: You can divide it if there is a division; if you took over the stocks you may indicate it, if you took over the assets you may indicate it.

A. Let me answer this way: The companies that I read off now are part of the E. I. du Pont de Nemours Powder Company.

Q. Well now, when you say "are," so as to avoid any trouble about that, do you mean that they did become a part of the assets of the E. I. du Pont de Nemours Powder Company at or about the time

when you organized that company? A. Well, some of them did and some of them afterwards.

Q. Well now, then, as you read them off, as you give those names, state when they became part of the assets of the Powder Company, please. A. The E. I. du Pont de Nemours & Company——

Mr. Graham: What is that?

A. The E. I. du Pont de Nemours & Company——

806

Mr. Graham: Well, that was your own company?

A. No, this is July, 1906; that was the company that was abandoned, wound up; that is the company we purchased the assets of.

Mr. Graham: I think this is leading to confusion, sir, and I don't want to interpose an objection, but it is the names that makes the difficulty, he is reading from a list there that shows a company, the 1899 company as I understand it—— 807

A. This 1896, this is——

Mr. Graham: 1896.

Mr. Abbott: The witness is not reading from any list.

Mr. Graham: I don't know what he is doing, if he isn't.

Mr. Abbott: The witness is using this in accordance with——

The Court: I asked him whether it would aid him in picking out the names of the corporations that this present company subsequently took over either in stocks or assets.

808 He said it would aid him. Therefore, the book is placed in his hands.

A. The first thing I see here is July 1, 1896, the E. I. du Pont de Nemours & Company——

Mr. Graham: Well, you know that was prior to the incorporation of any company and that related to the old partnership which was dead in 1899, wasn't it?

809 A. Yes.

Mr. Graham: I am going to see, if possible, that there is no confusion.

The Court: I think so far it is all right; now, then, the point is, Mr. du Pont, whether that concern was also represented in this so-called trade association.

A. Well, there were so many companies there that I don't want to get any more confused than 810 the confusion is now. There were so many of the same name that it is very hard to keep that straight. This particular company that is named here is the one that was abandoned.

The Court: Then, that wouldn't be one of the companies. Keep this in mind, that wouldn't be one of the companies that were subsequently taken over by you after the Trade Association had been abandoned, because it had already been taken over.

Mr. Graham: It was dead. That is the old partnership that never was taken over by him or any of his associates.

A. It was the old partnership that was wound up. Sycamore Powder Mills, Hazard——

Mr. Graham: Well now, wait a minute, it is the undisputed evidence offered by the Plaintiff that the Hazard Powder Company was owned by the E. I. du Pont de Nemours Powder Company 20 years prior to this event. Now, why do they attempt to confuse the jury by showing that it was taken over afterwards? 812

The Court: It is this witness, if there is any confusion, it is this witness himself that is doing it. The witness has been merely asked to name the concerns that were represented during the existence of that association, the assets of which were subsequently acquired by the present defendant company. Keep that in mind and I think you will have no difficulty.

Mr. Graham: If you will remember the question, as his Honor says, Mr. du Pont, you will have no difficulty. This gentleman is asking you what companies were taken over out of those that you named by the E. I. du Pont de Nemours Powder Company after the dissolution of this Trade Association, but he hands you the list of 1896. I don't know what that intended to do. 813

A. Is that the question; I don't get the question that way; let us have it again.

Q. At what time——

Mr. Graham: After the end of the Trade Association——

Mr. Abbott: That is not the question—

the question was explained later on there and I asked him to specify the time when they were taken over.

The Court: Well, that is merely asking him to give additional information. I will first hear such part of that question as relates to those that were taken over after the dissolution. If you then want to fix the time, that will form the basis of another question.

815

A. Now, these are the concerns that came in after the Powder Association was broken up.

The Court: Yes, that will be one way of putting it.

A. The date of the association breaking up and the coming in of the other companies are so nearly alike that I don't think I could differentiate entirely; I can give you the list of the companies here.

Q. If you will permit me one moment perhaps I
816 can put the question to you in a little different form. I will ask you whether or not the Powder Company acquired any of the interests of what was known as the E. I. du Pont de Nemours & Company?

The Court: That is at the time, after 1903?

The Witness: No.

The Court: The time that he says the Trade Association was in existence?

The Witness: 1902.

The Court: All right.

817 Q. I will ask you whether or not the company, or other interests which you gave the name of a while ago as the "E. I. du Pont de Nemours & Company,"—as being a member of the Gunpowder Trade Association—was afterwards acquired by the E. I. du Pont de Nemours Powder Company? A. Well, is that your first question?

The Court: That is this question, yes.

818 A. Its assets were taken over by the Powder Company, reformed, and that company is part of the present E. I. du Pont de Nemours Powder Com pany.

Q. Now then, the next one, was the Sycamore Powder Mills of the same character? A. That has been owned by the du Pont for very very many years.

Mr. Graham: So that it wasn't taken over?

819 A. When we bought the company it was among their assets.

Q. But the Sycamore Powder Mills you gave as one of the companies that was a member of the Association, did you not? A. Yes, sir.

Q. Now then, the Hazard Powder Company? A. The du Ponts bought that, too, many, many years ago; 20 or 30 years ago; it was a member of the Association.

Q. Then the Laflin & Rand Powder Company? A. That has since come into the big company.

Q. When did that come into the big company? A. I could not give you the exact date.

Q. By "Since," what do you mean, since when? A. Since breaking up of this trade agreement.

Q. That is when it was acquired through one

of these corporations that you formed? A. Yes, through the Delaware Securities Company.

Q. Then the Schaghticoke? A. They came in afterwards, after the breaking up. That was taken into the big company, came through the Delaware Securities Company.

Q. Now, the Oriental Powder Mills? A. The greater portion of that, the control of that, belonged to the du Ponts for many years.

Q. The American Powder Mills? A. That is out
821 to-day.

Q. You never acquired any interest in that company? A. No, sir.

Q. The Austin Powder Company? A. That is the concern in which we own 33 per cent. of the stock.

Q. The Miami Powder Comapny? A. That is out.

Mr. Graham: By "out," you mean independent?

The Witness: And independent, out of the powder company.

822

Q. The Ohio Powder Company? A. That is in.

Q. The Marcellus Powder Company? A. That is in.

Q. The Lake Superior Powder Company. A. I don't know about that, sir.

Q. The Chattanooga Powder Company. A. That was taken over afterwards.

Q. The Equitable Powder Manufacturing Company. A. That has never been taken over; still a powder company; that is one in which we own 49 per cent.

Q. You own 49 per cent. of it? A. Yes.

Q. The Southern Powder Company. A. That I don't know of.

Q. The Phoenix Powder Manufacturing Company. A. That I am not sure; I think that we brought that in; I don't remember for sure about that.

Q. The California Powder Works. A. That I didn't know until two days ago was a member of the association.

Q. Did the Powder Company in any way have any interest in the California Powder Works? A. 42 per cent., about.

824

Q. Did the Powder Company have any interest in the Phoenix Powder Manufacturing Company? A. I think it did.

Q. Do you know when it acquired that interest? A. No, sir.

Q. Was it on or about the time when you organized the Powder Company? A. I think the stock of the Phoenix Company, the Phoenix Powder Company was among the assets of the companies we purchased.

825

Q. Now referring to the questions propounded to you by Mr. Graham concerning the members of the "old board," the term which he used, and the "old people," as being the majority of the Board of Directors in that compan yas I understood you on your direct examination you stated that the interests which were formerly represented by the partnership had a majority of the Board of your company when you organized it in 1902. A. Not when we organized.

Q. What? A. Not when it was organized.

Q. Did you give them a majority of that board at any time after you organized? A. Yes, sir.

Q. How long did they retain a majority of that board? A. I don't remember.

Q. Well now, was it until the 1903 company was organized, the Powder Company? A. I don't re-

member. I think they were the directors until they died except perhaps the Senator.

Q. After the organization of the Powder Company, were any of those same interests represented on the board of the Powder Company? A. What do you mean by the "same interests", Mr. Abbott?

Q. I mean the du Pont interests which were formerly represented by the du Pont partnership, and the interests which you took over, known as the du Pont interests? A. Were any of those directors in
827 the Powder Company?

Q. Yes. A. I think nearly all of them, many of them.

Q. You stated that when you organized the original E. I. du Pont de Nemours & Company—— A. Company.

Q. Well, company. This representation of the former du Pont interests did not immediately become members of the board, how long after you organized it did they become membes of the Board? A. Very soon afterwards.

828 Q. About how long? A. I don't know.

Q. Was it as much as 24 hours? A. Oh, yes.

Q. How long? A. I don't know.

Q. Was it as much as a week? A. I don't know.

Q. Wasn't it practically at the same time, Mr. du Pont? A. No, the company was organized for the purpose and did purchase the assets of this old 1899 company. One of the conditions of the purchase was that they were to have a majority of the board until such a time as we made such payments.

Q. And you put them on your board at the time under some agreement, is that correct? A. Yes, sir.

Q. And the agreement was the one which you have indicated, is that correct? A. Well, which one do you mean?

Q. This agreement which you entered into with them, that they should have a majority of the board for the purpose of controlling the affairs of the company until the obligation to them was settled? A. I don't know whether it was controlling, but it was so they could stop anything they did not like.

Q. Didn't you say they had a majority of the Board? A. Yes, sir.

Q. Would not that be for the purpose of getting the control of the Board? A. Not necessarily, they had—— 830

Q. Then what purpose would it be for?

Mr. Graham: Finish your answer, you said "they had——"

A. (Continuing) So they could stop anything they thought was going wrong.

Q. How could they do that unless they had the power or control? A. They had the power, they had the majority, they did not have the power for that purpose. I was confused before. I did not 831 differentiate between the stock of the company and the assets of the company.

Q. Now referring to this matter of these detectives, you stated yesterday that they were employed for a certain purpose? A. Yes.

Q. Were the instructions—were any instructions given to any of these detectives that you know of? A. I don't know, sir.

Q. Do you know who had charge of that matter? A. No.

Q. Who employed them? A. No.

Q. Do you know anything about whose control, under whose control they were? A. No, sir.

Q. Well, from whom did you get your information concerning the employement of these detec-

tives? A. Why, I don't think I heard about that until they told me the detectives were on, and I asked why they were on, and they told me, and I said let them go, and they let them go, and I found it out afterwards.

Q. You let them go? A. No.

Q. You say you gave orders to let them go? A. When I found it out, I think they were gone, because I asked about it and they said they were gone.

833 Q. You say some of your people thought that Mr. Waddell would endeavor to entice your employees away. Who were those people that thought this thing about these employees? A. I don't remember just who it was said that to me.

Q. Can you tell who the employees were that these people thought he was going to try to entice away? A. No, I can not.

Q. Do you know where these employees resided that they thought he was going to entice away? A. I said I didn't know who they were, so I could

834 not tell you where they resided.

Q. Do you know whether any of these emplayees resided in the State of Illinois? A. I do not know.

Q. Do you know whether any of them resided in the State of Ohio? A. I do not know.

Q. I ask you whether any of them resided in the State of Missouri? A. I don't know who they were.

Q. I know, but I am asking you now the question so as to cover that point.

Q. Mr. du Pont, in the transaction of the business of the E. I. du Pont de Nemours Powder Company at that time, was there any person in the employ of your company that had any authority whatsoever to employ detectives for the purpose of folfowing Mr. Waddell, and if so, who was that per-

son? A. Well, I suppose any vice-president or director would be able to do that.

Q. Now, I will ask you if Mr. William B. Dwinnell was not in charge of that department of your company that had the authority to employ these detectives, and if Mr. William B. Dwinnell did not employ those detectives? A. I do not know.

Q. Now, if he had employed those detectives, would it not have been his duty to have done so by some order in writing, some letter or other document? A. No. 836

Q. Would it have been oral? A. May have been.

Q. Might have been? Is it the custom in your office to permit matters of importance to be transacted orally without any written record of it whatever? A. Yes, sir.

Q. It is? A. Depends upon what you call "important."

Q. Would you consider a matter of this character, that it was a matter about which there would be any record or any written order made whatsoever? A. I think it is very likely.

Q. Then I will ask you how it happened that you have in your possession certain written reports from certain persons who were employed to follow Mr. Waddell—those reports you say were in writing—how does it happen you have those reports in writing, a part of the transaction, and have not any writing of the other part, and that is oral? A. It is entirely probable that whoever was told to do this work, were told to make reports in writing. 837

Q. Now, as a matter of fact, you did not know anything about how those detectives were employed, did you? A. No, sir.

Q. You don't know anything about what instructions were given to those detectives? A. No, sir.

Q. So that whatever you have said with regard

838 *T. Coleman du Pont—Recross*

to the purposes of the employment of those detectives was matter which you have formed your own conclusions about? A. No, sir.

Q. And not upon any records? A. No, sir; because I was told about it.

Mr. Graham: Let him finish.

The Court: He said, "no, sir; because he was told so."

839 Mr. Graham: Wait a moment, let him finish; give him the key word, he did not finish whatever he was going to say.

A. (continuing) I was told that by somebody, and, as I said, I don't remember who that was.

Q. You don't know who it was told you? A. No, sir.

Q. You don't know whether an employee of your company? A. I don't know who it was.

Q. You don't know anything about who it was that told you? A. No.

840 Mr. Abbott: That is all.

Recross examination by Mr. Graham:

Q. Now, Mr. du Pont, Mr. Abbott has asked you about the "old people" as he calls it again, continuing in the board and you said a number of them had continued in the board. Isn't it a fact, that within a year two or three of the members of the Board died, Francis—— A. I think I said they continued until they died.

Q. What? A. I said they continued until they died.

Q. Alexis I.? A. Alexis I. and Francis G.

Q. And Charles I. du Pont died? A. Charles I. du Pont died.

Q. That was three out of how many? A. Out of how many du Ponts or out of whom?

Q. How many of them, what he is pleased to call the old interests of the company, died? A. Of the old interests, there was one, two, three, four, five people.

Q. That is what I want, the numbers; do not let us prolong it. A. Five.

Q. Three out of five died? A. Three out of five, counting Mr. Eugene du Pont, that is four.

Q. He was not in it? A. No. 842

Q. He died before you purchased the property? A. He died before the purchase.

Q. There is no doubt about it? A. No question whatever.

Q. Now, then, after these interests came into the possession, three out of the five died? A. Yes, sir.

Mr. Graham: That is all.

WILLIAM I. KOLLER, called and sworn as a witness for the plaintiff, testified as follows: 843

Direct examination by Mr. Abbott:

Q. Mr. Koller, where do you reside at the present time? A. Landsdown.

Q. Where is that? A. Delaware County, Pennsylvania.

Q. In Pennsylvania? A. Yes.

Q. How long have you resided there? A. Two years last August—this last August.

Q. Where did you reside previous to your moving to Landsdown? A. York, Pennsylvania.

Q. York, Pennsylvania? A. York, Pennsylvania.

Q. How long did you remain at York? A. Well,

844 *William I. Koller—Direct*

I was there all my natural life except these two years.

Q. What business were you engaged in while you were at York, Pennsylvania? A. The last ten years I have been in the powder business.

Q. In your own personal name, or I mean in your own name? A. Rockdale Powder Company.

Q. Was that a corporation? A. A corporation.

Q. What official position did you sustain to that corporation? A. Secretary and treasurer.

845

Q. What kind of powder did you manufacture, or other explosives? A. Black blasting powder and dynamite.

Q. When was that plant constructed—when were the plants and mills of the Rockdale Powder Company constructed? A. We purchased the property in the year 1900; and we completed our black powder plant in 1901; and after that we started to erect our dynamite plant, and that was completed in the early part of 1902.

Q. What capacity did your plant have for the manufacture of black blasting powder? A. About 350 to 400 kegs per day.

846

Q. What was the capacity for the manufacture of dynamite? A. About 10,000 pounds per day.

Q. Did you manufacture the entire capacity of your plant at any time during your operation of the plant? A. Yes.

Q. When was it that you manufactured your capacity? A. That was in 1902.

Q. Capacity in both regards, black blasting powder and dynamite? A. No, we had not brought the capacity of the dynamite plant up to that full capacity in 1902.

Q. When did you obtain full capacity in the manufacture of dynamite? A. Between 1903 and 1904.

Q. Now, how long did you continue to manufacture the black blasting powder at full capacity? A. Until about 1906.

Q. How long did you continue to manufacture dynamite at full capacity? A. About that same time.

Q. What, if anything, occurred about the time that you have indicated when you were not manufacturing at full capacity, to cause a change in that regard? What happened to cause you to cease to manufacture at full capacity? A. Well, the prices 848
became very much demoralized.

Q. What was the occasion for the demoralization of prices, if you know? A. Well, there was an apparent cut in prices.

Q. From whence did that cut come, if you know? A. The E. I. du Pont de Nemours Powder Company.

Q. Now, how long did that situation exist? A. For several years.

Q. By "several," how many years? A. Well, from, practically, the time we went in business up until 1906 and 1907.

849

Q. Now, did you undertake to do anything with a view to bringing about a cessation of this cut in prices? (Objected to and objection overruled.) A. Yes.

Q. Now state what you undertook to do in that regard? (Objected to and objection overruled.) A. In the year 1905, there was organized an association called the Association of Manufacturers of Powder and Dynamite in the United States; at one of our meetings there was a committee appointed, consisting of Mr. Blum of the Keystone Powder Company, and Mr. Macabee of the George R. Macabee Powder and Oil Company, and myself of the Rockdale Powder Company, to notify Mr. T. Coleman du Pont of the E. I. du Pont de Nemours

850 Powder Company. On account of Mr. du Pont's illness, we were unable to meet him. We did, however, meet in New York with Mr. Haskell and Mr. Patterson of the du Pont Powder Company.

Q. Do you know what offices each of those gentlemen or either of them held in the Powder Company—the du Pont Powder Company? A. As I recall at that time Mr. Haskell was one of the vice-presidents and Mr. Patterson the director of sales.

Q. Now did you have such a meeting? A. We
851 held such a meeting in New York.

Q. Now name who were present at that meeting as far as you can recall. A. Mr. Haskell, Mr. Patterson, Mr. Blum, Mr. Macabee and myself.

Q. Now tell what occurred at that meeting? A. Mr. Blum was appointed spokesman for your party, including Mr. Macabee and myself, and he asked Mr. Haskell—— (Objection overruled.)

Q. Proceed, Mr. Koller. A. As I said, Mr. Blum acted as spokesman for our party, and he asked Mr. Haskell with reference to the prices of black
852 blasting powder and dynamite.

Mr. Graham: Make him say what he said. That is stating a conclusion. What did he say?

Q. What was it he asked—— A. Sir?

The Court: What took place; don't characterize it or summarize it?

A. He asked Mr. Haskell whether the prices—whether he didn't think the prices of powder and dynamite were too low. Mr. Haskell stated that he thought the price of black blasting powder was about right, but dynamite was too high.

Q. What was the price of black blasting powder at that time? A. (Continuing.) It was at this moment, I think that I asked the question, "Well, how about the price on shot gun, smokeless and ordinance powder? Isn't it true that you have about a hundred per cent. profit in these commodities?" And Mr. Haskell said that he did not care to discuss that with me, or with us, that they were talking about powder and dynamite, and he further said that if it was a matter of trying to come to an agreement to fix prices, why the conference 854
would have to terminate. We told him that that was not our mission there, it wasn't to attempt to fix any prices or commit any unlawful acts, but we felt as independents that prices on powder and dynamite had gotten to that point where there was absolutely no profit in it and all that we desired was a fair living profit on the return of our investment. The prices had been slaughtered in many districts——

The Court: Just tell what took place there. 855

The Witness: Sir—your Honor——

The Court: Just tell what took place there. If you said that there, you may state it here.

A. Well, we did say that prices were demoralized and that our sole mission over there was to ascertain whether we could not arrange with them some amicable agreement whereby we could all be in the field and make a moderate profit on our goods.

Q. Well, now, was anything else said at that time? A. I believe that was about all the——

Q. Well, now, what response, if any, was made to that statement by either of the gentlemen present?

Q. Was anything further said at that conversation by Mr. Patterson or Mr. Haskel with reference to the subject of the conversation; did he accede to your request to arrange some basis of prices? (Objection sustained.)

Q. Now, was anything further said to you by Mr. Haskell or Mr. Patterson with reference to the statements which you have just related you made to those gentlemen? A. Mr. Haskell said that they would not agree to any fixing of prices.

857 Q. Did he give any reason for his unwillingness to agree? A. Well, he said that in the past they had had arrangements of that kind and they were not doing it any more, and he said that they would not consider any proposition of the kind.

Q. Can you remember any language that he used —can you remember the language specifically that he used to you in making that reply? A. Well, there was one remark that I recall—he said that in the past they had come as near wearing stripes as they cared to, and looking across the table he

858 nodded to Mr. Patterson. He said, "How about that, Charlie?" and Mr. Patterson nodded his head in assent.

Mr. Katzenbach: Well, we object to that and ask that that be stricken out, that part, "in assent."

The Court: Well, he may say how he nodded.

A. Nodded his head.

Q. You say he nodded it in assent.

Mr. Graham: No, no, he said he nodded his head.

The Court: You mean up and down.

Q. Well, did Mr. Haskell make use of any other expression or phrase to you, as near as you can recall the words of it, at that time, concerning the relations between the companies that you represented and the company which he represented? A. He simply said in a final conference that it was a survival of the fittest.

Q. Did the conversation end at that point?

Mr. Graham: He said it was final——

860

A. I cannot recall now.

Q. Did you have any further negotiations with Mr. Haskell or any other the representatives of the E. I. du Pont de Nemours Powder Company with reference to making an arrangement to stop the cutting in prices which had prevailed? A. Not to my knowledge.

Q. Was there any change in that regard subsequently—was there any change in prices after that conversation? A. No, none to better the condition of the independents.

861

Q. Were prices increased in any way? A. Not to my knowledge.

Q. Now, how long did the Rockdale Powder Company continue in business after that conversation? A. Until 1909.

Q. Did you continue to manufacture black blasting powder and dynamite? A. Yes.

Q. Did you manufacture to your full capacity? A. During what period?

Q. After the time of this conversation that you have related? A. Yes, as far as I can recall now.

Q. How long did you continue after that to manufacture at your full capacity? A. How long?

Q. Yes. A. After this meeting?

Q. Yes. In other words, so that you can see

what I am trying to inquire about it, you had a capacity of three hundred and fifty to four hundred kegs per day of black blasting powder. (Objected to.)

Q. Let it be withdrawn. What was the output of black blasting powder in the year 1906? A. As I recall now, about 400 kegs per day.

Q. Now, what was your output of black blasting powder in 1907? A. About the same capacity.

Q. I am not asking about the capacity now; I am
863 asking about output? A. About the same output.

Q. What was the output in 1908? A. About half that amount.

Q. What was it in 1909? A. Well, practically—— (Objection sustained).

Q. Now, what was the final result so far as your operations were concerned after this conversation that you had with Mr. Haskell? A. In 1910 we finally discontinued business.

Q. Why did you discontinue business in 1910? (Objection overruled.) A. We were simply annihilated. (Motion to strike out answer sustained.)
864

Q. Did you cease the manufacture of powders in 1910? A. Yes, we ceased before then.

Q. Did you cease to manufacture dynamite at the time that you indicate that you went out of business? (Objection overruled.) A. It was about a year later, I think, that we ceased to manufacture dynamite.

Q. A year later from what period? A. From the period from which we ceased to manufacture black powder.

Q. Well, now, what year was it that you ceased to manufacture dynamite? A. I think it was 1909.

Q. And then you ceased to manufacture black blasting powder in 1908? A. As near as I recall.

Q. Then between 1908 and 1910, as I now under-

stand you, you were not operating at all? A. Not at all.

Q. Except in dynamite, which you continued to operate in for about a year? (Objection overruled.)

Q. Is that right? A. That is correct.

Q. Now, what was the price of black blasting powder at the time when you had this interview with Mr. Haskell and Mr. Patterson? (Objection overruled.) A. Ninety cents per keg.

Q. What was the price of dynamite at that time? 866

A. Ten and a half cents on a basis of forty per cent.

Q. Ten and a half cents per keg or per pound? A. Per pound.

Q. Now, do you know what percentage—I am asking you now of your own knowledge, best information—what percentage of black blasting powder was manufactured by the companies which you called independent companies at the time when you had this conversation with Mr. Haskell, in the United States? A. Before I answer that question, what was the question you asked me previously regarding the price of dynamite? 867

The Court: You said ten cents and a half cents per pound.

The Witness: Per hundred pounds.

Q. Per hundred pounds? Do you mean ten and one-half cents per pound in 100-pound lots, or ten and a half cents per hundred pounds?

Mr. Graham: He has answered.

Mr. Abbott: I didn't understand the answer and I want to find out about it.

The Court: I think it is permissable.

A. I want to get correct on that. Ten and a half

868 *William I. Koller—Direct*

The Court: One hundred pounds?

The Witness: A hundred pounds. I mean ten and a half cents per pound.

Mr. Graham: That is what you said first.

A. Was that my first answer?

The Court: That is your first answer.

Q. Ten and a half cents a pound? A. Yes.

869 (Former question repeated by the Reporter as follows: "Q. Do you know what percentage—I am asking you now of your own knowledge, or best information—give what percentage of black blasting powder was manufactured by the companies which you call independent companies which you call independent companies, at the time when you had this conversation?") A. About 25 per cent.

Q. About 25 per cent. of the total output, is that correct? A. That is correct.

Q. Now, what, if any, other things were done by any of the interests which you have spoken of as

870 the interests represented by Mr. Haskell and Mr. Patterson to interfere with or affect your trade which caused you to bring about this conference? (Objection overruled.) A. Our goods were condemned. I recall one instance where our southern sales agent reported——

Mr. Graham: That is clearly objectionable. The question may have called for what these persons did.

The Court: I understand. So far, I will admit the witness's answer to his own knowledge.

Q. Very well. Now, you have said your goods were condemned. State of your own knowledge in what manner your goods were condemned. (Objection overruled.) A. From my own personal knowledge I can't give a direct answer to that question. I only have the reports from our various men who were selling our goods.

Q. Those men were your agents, were they? A. Yes, sir. (Motion to strike denied.)

Q. Now, Mr. Koller, can you say whether or not this price of 90 cents which you stated black blasting powder was sold for at the time when you had this meeting with Mr. Haskell was above or below cost price? 872

Mr. Katzenbach: That is objected to because it don't say above or below whose cost price.

The Court: I will allow it. You may examine him.

A. We considered that 90 cents was below our cost price. 873

Q. That was below the price that you could manufacture powder for? A. Yes.

Q. Did you yourself make any price to anyone at 90 cents? A. Yes, I think we sold some powder in the Pittsburgh District at 90 cents.

Q. Do you know who the other manufacturers of powder were that made this price of 90 cents?

Mr. Graham: Of your own knowledge.

Mr. Abbott: Mr. Graham, will you kindly let the witness answer my question? You can cross examine him on that.

Mr. Graham: I beg your pardon.

874 *William I. Koller—Cross*

The Court: The witness is cautioned that he must always speak of his own knowledge.

Mr. Graham: He didn't before and I only wanted him not to forget it this time.

A. No, I can't say that I did know positively who made the price of 90 cents

Q. Was there anything said at this conversation between you and Mr. Haskell as to whether the companies that he represented had anything to do with
875 that 90 cent price? (Objection overruled.) A. Mr. Haskell said at that meeting, he said he thought the price of powder was about right when me mentioned 90 cents.

Mr. Abbott: That is all.

Cross examination by Mr. Katzenbach:

Q. Mr. Koller, when did you become connected with the Rockdale Powder Company? A. In 1900.

Q. Had the company been in existence prior to
876 that date? A. No, sir.

Q. What business had you been engaged in prior to the year 1900? A. Mercantile and banking.

Q. Had you ever had any connection with the manufacture or sale of powder or high explosives prior to the year 1900? A. None whatever.

Q. Then your business prior to that time had been mercantile and banking, had it not? A. Yes, sir.

Q. Did you devote your entire time to the office of secretary and treasurer of the Rockdale Powder Company? A. Only part of my time up until 1904.

Q. Where was the plant of the Rockdale Powder Company located? A. Hoffmanville, Maryland.

Q. Where was the dynamite plant located? A. Both plants were located at Hoffmanville.

Q. Did you reside there at Hoffmanville during the years 1900, 1901, 1902, 1903 and 1904? A. No, I resided at York.

Q. At York? A. I resided there all the time.

Q. During the entire time? A. During the entire time.

Q. Did you have any active experience with the manufacture of either dynamite or black blasting powder during your connection with the Rockdale Powder Company, or were you solely in the office of the company? A. Well, up until a certain time 878 I simply had charge of the duties of secretary and treasurer. Then later I was delegated other powers, such as purchasing, selling and making an occasional visit to the plant.

Q. But you were not actively engaged in the manufacture of dynamite, that is in the manufacture itself of dynamite? A. Not in the manufacturing end of it.

Q. Or in the manufacturing end of black blasting powder? A. No.

Q. Now, you said the capacity of this mill was, 879 so far as black blasting powder was concerned, was between 350 and 400 kegs a day? A. That is correct.

Q. Was that the capacity which it started out with? A. No, it was very small when we started.

Q. And you worked up to that capacity? A. Worked up to that capacity.

Q. Now, what was your capacity for dynamite per day when you started in business? A. I should say that was about the same all the way through our entire existence from the time we started to make dynamite.

Q. Then your company in the year 1900 had the same capacity that it did in the year 1906 in dynamite? A. No; we were not making dynamite in 1900.

880 *William I. Koller—Cross*

Q. When did you commence the making of dynamite? A. About 1902.

Q. And what was your capacity per day in 1902? A. About 10,000 pounds per day.

Q. You said 10,000 pounds per day? A. 10,000 pounds per day.

Q. What economy did you have in your manufacturing department of dynamite with reference to the recovery of acids, any at all? A. None, we did not recover our acids.

881 Q. Then you did not manufacture dynamite under the most approved methods, did you, in your plant? (Objection overruled.)

A. That is rather a difficult question to answer. Different plants have had different methods of making dynamite.

The Court: I assume when you used the word "approved" you meant "economic"?

Q. Most economic method? A. At that time we thought that was the most economic method.

882 Q. You know now that it was not, don't you? A. Well, possibly that is true at this day.

Q. Did you pack your dynamite by hand? A. Yes, sir.

Q. Did you consider that as the most approved method of packing? A. Well, we thought so at the time.

Q. But you know differently now, don't you? A. Perhaps a machine is the more economical.

Q. Now, when did you enter this association that you have referred to? A. 1905.

Q. In 1905. And was that association composed of manufacturers of black blasting powder and higher explosives? A. Both, yes.

Q. Who were the members of that association?

A. I can't give you the names of all of them offhand, now.

Q. Well, give me the names of those that you recall? A. Well, there is the Keystone Powder Company, Emporium; George R. Macabee Powder and Oil Company, Pittsburgh; the Burton Powder Company of Pittsburgh; the Senior Powder Company of Cincinnati; the Ajax Dynamite Company —I think their address is Bay City, Michigan; the Seberite Powder Manufacturing Company of Washington; the Emporium Powder Company of Em- 884
porium, Pennsylvania; the D. C. Rand Powder Company—I think their address was Fairchance, West Virginia. There were possibly three or four others that I don't recall just at the moment.

Q. The Equitable Powder Company? A. I think they were—Mr. Gorham, president, was he president of the company, is that the one you refer to?

Q. I am asking you.

The Court: He is trying to identify it.

Q. The Excelsior Powder Company? A. The 885
Excelsior Powder Company.

Q. Mr. Olin of the Equitable Powder Company? A. I think not.

Q. The Buckeye Powder Company? A. No.

Q. They were not a member? A. No.

Q. You are positive of that? A. I am positive of that statement; yes, sir.

Q. Can you recall any others at this time than those that you have given? A. There is one in Joplin, Missouri, Mr. Rudd.

Q. Mr. Rudd? A. Mr. Rudd was connected with it.

Q. Independent Powder Company? A. Independent, and there is one——

886 *William I. Koller—Cross*

Q. They manufactured dynamite also, didn't they? A. Yes, I think they manufactured dynamite exclusively and there was another at Terre Haute.

Q. The Indiana Powder Company? A. That is not the name.

Q. Then there were about fifteen or twenty in this association and more than that? A. As near as I can recall, from fifteen to twenty.

Q. Twenty. Now, then, when did you form this association? A. In 1905.

887 Q. And what was the purpose of it—the purpose of it was that you had been competing among one another for trade and had demoralized prices, hadn't you? A. No; that was not the purpose of this association. The purpose was simply to formulate some plans whereby we would be of some assistance to one another in the case of accident, in the matter of railroad tariffs; and there were many things that we had under consideration for the benefit of each individual member. For instance, at the time of the explosion in our own case

888 we had only one plant, and then other plants in the different parts of the country could come to our assistance in a time of stress when we wanted to furnish a customer with powder that we were unable to furnish him with on account of an accident. Now those were some of the reasons why we formed this association—for our own mutual protection. The idea of regulating prices or anything of that sort was not considered at all at any time, it was simply to work out our existence and try to do business on a profitable basis.

Q. Then you never considered the matter of prices then, at any meeting of the association? A. We never considered the fixing of prices at any meeting.

Q. Did you ever discuss price? A. Oh, yes, prices were discussed.

Q. Now, then, was it the result of the discussion of prices that you had this interview that you have testified to with Mr. Haskell? A. Yes, sir.

Q. And the subject of the interview was one of price, was it not? A. It was.

Q. Now, then, when did the Rockdale Company first sell dynamite? A. In the year 1902.

Q. And what price did you get for dynamite? A. Twelve cents.

Q. In order to get customers, did you lower the price of your product in order to get them? A. Not 890
in every instance.

Q. But in many instances you did in order to get a customer, offer that customer a better price than he was paying for dynamite, did you not? A. We simply sold him our goods on their merit and tried to maintain what we considered the market price in the localities in which we were able to market our goods, and when he came to us and said that the du Ponts had offered him a lower price——

A. (Interrupting). Yes, with this explanation—

Q. Now, then, at this interview which you had 891
with Mr. Haskell you talked with him in reference to the price, did you not, of black blasting powder and dynamite? A. Yes, sir.

Q. And the result of that interview was that Mr. Haskell would have nothing to do with price or any regulation of prices? A. He declined to.

Q. Or stifling of competition. A. He declined to enter into any arrangement whereby prices of dynamite would be fixed.

Q. And your purpose there with the other members of the committee was to get the price of black blasting powder and dynamite fixed? A. Not at all.

Q. You stated that in order to get the prices

fixed—— A. We were not there for the purpose of fixing prices or doing anything that was unlawful.

Q. I am not saying that you were, but didn't you go there for the purpose of fixing a price? A. No, sir; we simply went there with the sole purpose in view of trying to find out whether there was not some bottom to the ruinous prices. Powder at that time was being sold, as I have testified, at 90 cents, which we considered at a loss.

893 Q. You had sold it at 90 cents? A. Yes, we had sold some powder at 90 cents in the competitive districts.

Q. Who were your competitors in that district? A. Principally the E. I. du Pont de Nemours Powder Company.

Q. Well, state any special instance where the E. I. du Pont de Nemours Powder Company cut the price of the Rockdale Powder Company on powder. A. If my recollection serves me correctly, George W. Lewis & Company of Pittsburgh.

894 Q. Do you recall testifying in the suit of the United States of America against E. I. du Pont de Nemours & Company and others? A. Yes, sir.

Q. Do you recall your answer to this question in that testimony: "Can you——"

Mr. Abbott: If your Honor please, I simply want to inquire whether counsel is now reading the answers in another case, if so, if your Honor will permit that, and allows him to do that, we may want to read some answers, too.

The Court: He is under cross examination. What is your purpose, Mr. Katzenbach, perhaps that will clarify the situation?

Mr. Katzenbach: To contradict the witness.

The Court: Very well, I will allow it.

Q. Do you recall being asked this question: "Can you name a specific instance in which the du Pont companies ever cut a price of yours?" And your reply was: "A. I don't recall any specific instance"? A. I recall that answer at that time; yes.

Q. You said that the du Pont Powder Company had cut a price to George W. Lewis of Pittsburgh? A. That was the information I had.

Q. Did you get that information from—by someone else? A. No, I got that from Mr. Lewis. 896

Q. At what price had you been selling Mr. Lewis? A. As I recall we sold him at a dollar five scaled down to ninety.

Q. Dollar five scaled down to ninety? A. Yes; I can't name the positive amount that was sold at these figures.

Q. Now, do you say that the du Pont Company ever sold to George W. Lewis at less than 90 cents? A. I didn't say that.

Q. You didn't say that? A. I didn't say that they sold at less than 90 cents. 897

Q. Did you say they sold at 90 cents? A. That is the information that I have.

Q. Then when you say it cut the price, you don't mean a cut, you mean meeting the price, don't you? A. Well, that was a cut price from our original price that we had been selling to Mr. Lewis, as I told you, at a dollar five.

Q. You say you have sold Mr. Lewis at 90 cents, is that right? A. Yes, we sold him finally as low as 90 cents.

Q. Started at a dollar five? A. Yes, at a dollar five and finally we dropped out.

Q. And you had various members in that association competing, did you not, in that district for Mr. Lewis' trade with you? A. Not to my knowledge.

Q. Did not the Burton Powder Company compete there with you? A. They may have been there, but not to my knowledge; I knew nothing about their competing.

Q. You didn't know anything about their having made any prices to Mr. Lewis? A. I don't.

Q. Or of any other powder company? A. I don't.

Q. Then your price went to Mr. Lewis from a dollar five to ninety cents by reason of competition, did it? A. That is my recollection of the incident.

899 Q. But you don't say that the du Pont Powder Company sold below 90 cents? A. I can't answer that question; I was not informed.

Q. Now, you were asked in the suit of the United States, petitioner, against the E. I. du Pont de Nemours Powder Company to give a list of customers which you said were taken away from you, and didn't you refuse at that time to give the prices at which you had sold to those people? A. I don't think I refused to give the prices.

Q. Then you declined to give them? A. I don't

900 recall that being my testimony, that I declined to give the prices.

Q. Were not you asked by Mr. Scarlet, you recall him, do you not? A. Yes, sir.

Q. To furnish a list of certain customers of yours, you recall that, don't you? A. Yes, I recall that.

Q. Then when that list was furnished, did you furnish the prices at which you had sold to those customers? A. I think so.

Q. That is your recollection, that you did furnish the prices? A. That is my recollection, yes. That was at the trial in Philadelphia you refer to. to the Government trial in Philadelphia?

Q. I refer to the Government case. A. Yes.

Q. You say that you gave to Mr. Scarlet a list

of prices—will you say that? A. That is my recollection, yes.

Q. Well, will you say that you did or didn't after he had requested it? A. I think I did, to the best of my knowledge at the moment.

Q. That is your best recollection then of what you did? A. Yes, sir.

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott: 902

Q. In reference to this last inquiry—these latter inquiries of counsel concerning what you testified to in the Government case, I will ask you to state as near as you can recall whether the following did not occur at that time: "Q. Can you name a specific instance in which the du Pont Companies ever cut a price of yours?" Did you answer to that——

Mr. McCarter: I don't think that is proper, your Honor. 903

The Court: That is on the same subject so far.

Mr. Abbott: Counsel read part of this, if your Honor please.

The Court: You are entitled to have it all.

Q. "A. I don't recall any specific instance." Counsel read that far. "It was a general case of them meeting prices for the simple reason at that time were about the only manufacturers of powder and dynamite, that is that made both, that manufactured both black powder and dynamite, and we felt the cuts more than anybody else, perhaps." Do you remember that? A. That was my testimony.

Q. Were not you interrogated further: "And you

904 can't remember a specific instance in which they ever cut your price so that we could look it up and find out whether it is so or not?"

Mr. Katzenbach: Where are you reading from, Mr. Abbott?

Mr. Abbott: I am reading from page 807.

905 Q. And you answered, "I can't at this moment." And you were asked, "Do your records show?" And you answered, "There are a number of specific instances." And you were asked, "Do your records show"? And you answered, "Perhaps they would." And you were asked, "Do you know whether they would or not?" And you answered, "Whether they would show that the du Pont Company cut our prices?" And you were asked, "Yes." And you answered, "I don't know whether they would; I could not state that." Do you recall that? A. That is my testimony as near as I recall, yes.

906 Q. Now, have you in any manner since the time when you gave that testimony endeavored to refresh your memory or recollection upon that subject? A. I have not.

Q. How did you obtain the name of the customer which you gave a moment ago as one specific instance? A. You refer to Mr. Lewis?

Q. Yes. A. It just came to my mind, for the simple reason that at one time Mr. Lewis was a very close friend, and he handled a great deal of our powder in that district, as long as he could on a profitable basis, for us.

Q. Mr. Katzenbach asked you some questions in regard to this association which you were a member of. Did that association have any written arrangement, in any way, a constitution or by-laws? A. Yes, it had a constitution and by-laws.

Q. I show you a small pamphlet and ask you to examine the same and state whether this is the document that you refer to? (Handing paper to witness.) A. That is the document.

Paper offered in evidence; offer objected to and objection sustained. To which ruling plaintiff's counsel excepted and said exception was allowed.

908 Q. Are you able to remember definitely any further names of members of this association than you gave to Mr. Katzenbach while he was examining you, without refreshing your recollection in some manner? A. At the moment I can't ; but if my memory serves me correctly, the names of the members of the association at that time were printed in the back of that document which you showed me a moment ago.

Q. I show you, then, the document that you refer to and ask you to refresh your memory from that and give a correct list of the names of the members of that association.

909

The Court: The additional ones, that is all you want, isn't it?

Q. Yes, if there are any additional ones there. A. Did I give you the Cressona Powder Company, the Eldredge Powder Company, the Nitro Powder Company, the Shamokin Powder Company, the Pennsylvania Powder Company? I believe that is the list as near as I recall in addition to what I have named before.

Q. Now, that gives a complete list of all the members of the association at any time during its existence, so far as you know? A. No, there were other members admitted after that.

Q. Who were they? A. Oh, I don't recall their names at the moment.

Q. Do you remember when they were admitted? A. Well, they came in in the following year, some of them.

Q. You can't recall any further names in that connection? A. I can't recall at the moment, Mr. Abbott.

Mr. Abbott: That is all.

911 *Recross examination by Mr. Katzenbach:*

Q. Mr. Koller, what you have said with reference to Mr. George W. Lewis of Pittsburgh was what Mr. Lewis told you, was it not? A. Yes, sir.

Q. And everything that you have said was what Mr. Lewis told you? A. Yes, sir. (Motion to strike out, denied.)

Q. When did you first have this conversation with Mr. Lewis? A. During a visit of mine to him at Pittsburgh.

912 Q. Did he ever tell you that he had testified in the case of the United States of America, petitioner, against E. I. du Pont de Nemours & Company in this manner: "Q. During the years 1902——" (Objection sustained.)

Q. Did Mr. Lewis tell you that in the case of the United States of America, petitioner, against E. I. du Pont de Nemours & Company and others that he had testified as follows——

The Court: No, you can't do that, you may ask him whether he told this witness that he had testified in that case.

Mr. Katzenbach: That he had testified.

Q. Well, then, just answer that question. A. Mr.

Lewis never made any remark to me concerning his testimony in this case.

JOHN G. MILLER, a witness called and sworn for the plaintiff, testified as follows:

Direct examination by Mr. Abbott:

He resides at Chicago at the present time; has 914
resided there since 1889, with an interruption of a year or a year and a half; resided in St. Louis previous to going to Chicago; lived in New York from about April 1, 1899, to July 1, 1900; was general sales agent of the Laflin & Rand Powder Company from September 1, 1895, to December 31, 1903; was appointed to that position by J. A. Haskell, its president; after he left the employ of the Laflin & Rand Powder Company, he went into the brokerage business in Chicago, and has conducted the same ever since under his own name; he made arrangements to sell the powder of the Buckeye 915
Powder Company on a net price basis, in 1904; became a stockholder in the Buckeye Powder Company, for 100 shares of the par value of $50 each.

Q. After you became a representative of the Buckeye Powder Company, what, if any, steps did you take to do business for that company? A. I covered the territory for the Buckeye Powder Company, that is, travelled over it the same as I had done for the Laflin & Rand Powder Company. Through Illinois, Iowa, Minnesotta, Kansas and Missouri.

Q. Did you have any special field allotted to you in which you were to operate exclusively? A. No, sir, not any special district that I know of.

916 *John G. Miller—Direct*

Q. What did you do with reference—how did you go about trying to get the trade for your company —to sell powder? A. Called on customer, asked the customer, solicited his business and tried to find out about the prices he was paying, the same as selling any other goods or in selling Laflin & Rand's goods, and have to rely upon his honesty for the information.

Q. Did you receive any instructions at that time or advices from the Buckeye Powder Company as
917 to prices that you were to charge for Buckeye powder? A. I applied to the Peoria office for prices from time to time and in some instances I would have to practically get the authority to meet competition. I had to use a corkscrew—took two or three letters to get authority.

Q. By that what did you mean, by a corkscrew, will you explain that term? A. Well, Mr. Waddell was reluctant to reduce prices, because he stated he was in business——

A. In some instances I would have to write two
918 or three times.

Q. Did you find in your efforts to secure business any particular fact which stood in your way of securing business, any particular circumstances? A. A matter of price, right along.

Q. Do you know anything about a system that was carried on of making contracts? A. Yes, sir.

Q. Do you know of your own knowledge that there were contracts in existence at the time when you were trying to transact business with the Buckeye Powder Company? A. Yes, sir. I called on customer after customer and I was informed that he couldn't do business with me because he had a contract——

Q. Did you find any other fact or circumstance in the way to prevent you from securing business

from customers whom you approached—consumers of black blasting powder? A. Well, the preference or demands of the miners cut quite a figure at times.

Q. Well now then, state in your own way what you learned with reference to any influence of that character which prevented you from securing business from consumers of black blasting powder? (Objection overruled.)

A. Complaints were made by our customers that the Buckeye powder was not satisfactory to some 920
miners. They wanted a certain brand, and demand had been made upon them for a certain brand.

Q. By whom was that demand made? (Objection sustained.)

Q. Well, Mr. Miller, do you know of any customer or consumer of black blasting powder whom you approached for the purpose of selling him Buckeye powder that had any contract for the purchase of black blasting powder with any other manufacturer of black blasting powder?

921

The Court: First ask if he had a written contract.

Q. (Continuing) Let this question go to written contracts.

The Court: Now, Mr. Witness, of course in view of what has been said, my present ruling is that unless you saw the written contract you can not say.

The Witness: I saw the written contracts for the reasons they were executed in my presence, a lot of them.

The Court: That is evidence.

Q. Now state with what customers you saw such

922 *John G. Miller—Direct*

contracts? A. Well, I made contracts with W. A. Wells & Company, Buxton, Iowa.

Q. You misunderstood my question. I mean contracts made by the Buckeye Powder Company with customers of the Buckeye Company who had contracts with other concerns. A. I am talking about contracts I made with Laflin & Rand Powder Company.

The Court: That is not the question which is now asked of you.

923

A. I made no contracts for the Buckeye, we took spot orders only for a specified number of kegs or car loads.

Q. I will ask the witness if you saw any contracts which were made between any consumer of black blasting powder and the company that you were representing, previous to the time when you left the employ of the Laflin & Rand Powder Company? Did you see any such contracts executed? A. I did not see them after I left the employ; no,

924 sir.

Q. I mean before you left the employ? A. I was present when they were executed.

Q. Do you know of your own knowledge of any written contracts which were made between the Laflin & Rand Powder Company while you were in the employ of that company with any consumer of black blasting powder in the territory in which the Buckeye Powder Company operated? A. Yes, sir.

Q. Now, can you give the names of the consumers with whom such contracts were made, from memory? A. I can of some of them; yes, sir.

Q. Give as many as you can. A. W. A. Wells & Co., Buckston, Iowa; Smith & Lowe Co., Des Moines, Iowa; Phillips Coal Company, Ottumwa, Iowa; Empire Coal Company of Viola, Illinois; Chi-

cago & Burton Coal Company; Mt. Carmel Coal Company, Frontenac, Kansas; Central Coal & Coke Company, Kansas City; Weir Coal Company, Kansas City; Southwestern Improvement Company, Mineral, Kansas; Hamilton & Braidwood Coal Company, Weir City, Kansas; Black Diamond Coal Company, Springfield, Illinois; Coalfax Coal Company, Colfax, Iowa; W. C. Shepherd & Company, Oskaloosa, Iowa. I guess that is about all I can recall for the present.

926 Q. Is that all you can recall for the present? A. I think so.

Q. Now, did you have any dealings with any of the companies whose names you have given after you became the representative of the Buckeye Powder Company? A. I called on most of them with the exception of, I think, the Black Diamond Coal Company and the Chicago & Burton Coal Company.

Q. Those two companies you didn't call upon? A. No, sir.

927 Q. Now, did you succeed in doing any business with any of the companies whose names you have enumerated? (Objection overruled.) A. I sold, I secured orders from W. & A. Wells & Company for several car loads; sold the Devlin interests, that is, the Mt. Carmel Coal Company, several car loads and possibly some others; I wouldn't be positive.

Q. Did you continue to sell to the companies whose names you have last enumerated, Buckeye powder? A. No, sir.

Q. For what reason did you not continue to sell?

Mr. McCarter: I object.

Q. If you know?

The Court: (To the witness) Well, not in-

cluding anything they may have said to you at this time.

A. Well, without using the information I received from a customer I don't know anything.

Q. Did you continue your efforts to do business with the other persons whose names you have used here? A. Yes, sir.

Q. Did you succeed in selling them powder? A. I could not state at this time whether I made sales
929 to others or not.

Q. Now, coming down to the other matters which you found operated to prevent you selling powder, if there were any, will you state what you learned of your own knowledge with reference to any influence which was used with the miners to induce them to object to the use of Buckeye powder? (Objected to.)

Q. Let me ask you whether you had any personal knowledge of anything done by anybody to influence operators against the use of your powder
930 other than what you obtained from such persons? A. You mean someone in the act?

The Court: Yes.

A. No, sir.

Mr. Abbott: Will your Honor confine us to that line of inquiry from the witness?

The Court: At this time, yes.

To which ruling of the Court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. You referred to the Phillips Fuel Company, did you not, in the list that you gave? A. Yes, sir.

Q. Did you have any business with that company, did you sell them Buckeye powder at any time? A. Yes, sir; we sold them quite a number of car loads.

Q. When did you cease to sell powder to the Phillips Fuel Company? A. Well, at the time the Buckeye Powder Company was succeeded by the Western Powder Company there were a few car loads, out on an old order. 932

Q. Was there any question affecting any of these customers whose names you have given which involved the matter of price at which the powder was offered for sale?

The Court: I do not know that I comprehend that.

(Question repeated.)

Q. Perhaps the question of itself is not as clear as it should be. I will ask you this: In your relations—in your dealings, or efforts to get business of the Phillips Fuel Company, did the price come into your negotiations in any way? A. Yes, constantly. 933

Q. Tell us in what way that question presented itself. (Objection overruled.) A. The Phillips Coal Company or Fuel Company, the name changed from time to time, would ask for prices on a certain number of car loads; I would quote them the price and then I would be informed that they had a quotation.

The Court (to the witness): Distinguish between the actual facts, that is, that can be testified to as to what occurred without

regard to anything said. Now you had been selling them, had you?

The Witness: Yes.

The Court (To the Witness): And you offered powder at a certain figure. Well, did they take it?

The Witness: It was not bought at the price quoted first.

Q. What was the first price that you quoted, we
935 will say? A. I couldn't say at this time, Mr. Abbott.

Q. Do you know what you sold, what the first sales were that you made to the Phillips Fuel Company; do you know how much they paid you? A. I couldn't say at this time.

Q. Do you know what was the last sale that you made to the Phillips Fuel Company; what price you sold at? A. The last sale was at 92½c., delivered.

Q. Do you know of a company that manufactured powder by the name of the Royal Colliery
936 Company? A. I know a coal company by that name.

Q. The company of which Mr. G. D. Wentz was president? A. I know a coal company, you said powder company.

Q. I beg your pardon; I meant colliery company if I said powder company. Where was that company located if they were doing business? A. They were operating mines in Illinois and in the east.

Q. Did you endeavor to sell any powder to that company? A. I endeavored to sell them at the Illinois mines.

Q. Now, did you succeed in selling them? A. No, sir.

Q. Can you state of your own knowledge why you did not succeed in selling them powder?

Mr. Graham: What somebody else told the witness, as I understand. 937

The Court: I will allow him to show what he offered the powder for and did not succeed——

Q. Well, what did you offer powder to the Royal Colliery Company for—what price? A. I quoted them $1.10, I think, first, and then reduced that to $1.05, and they came back and said that they could buy it—naming the figure——

Q. Never mind what they said. A. I think the price was ninety cents.. 938

Mr. Katzenbach: We ask that that be stricken out.

The Court (to the witness): You see, it is very difficult for a layman to understand those distinctions. The point is you may tell what you said to them in relation to the purchase of powder, that is to say the figure you offered them and you may say whether they took it.

939

Q. Well, did you come in contact with any instance where shipments were made to your customers and information was communicated to you that that shipment had been made, from other sources, before you yourself knew the shipment had been made? A. No, sir.

Q. Never knew of such a case?

Mr. Katzenbach: I desire the Court's——

The Court: He said no.

Q. I will ask you whether or not you did not know that a certain Clerk in the office of the C. B. & Q. Railway Company was giving out information of shipments which were being made by the Buckeye

940 Powder Company from the station of the C. B. & Q. Railway Company at Edwards, concerning shipments which were made by the Buckeye Powder Company to its various customers?

(Motion to strike out answer sustained.)

Q. Don't say what anybody else told you with regard to any matter excepting such as relates to your own knowledge of the transactions and what
941 you did in connection with them. A. After receipt of the complaints I called at the General Office of the Burlington Road and saw the Assistant Freight Agent and the General Freight Agent and they thought it was impossible for any——

Q. Don't state what they thought; state what they did.

(Motion to strike the answer sustained.)

Q. Do you know of your own knowledge of any steps that were taken by the officials of the C. B. & Q. Railroad for the purpose of ascertaining
942 whether the agent of that road at Edwards, Illinois, was giving out information concerning the business of the Buckeye Powder Company?

(After argument.)

Q. Did any agent or representative of the C. B. & Q. Railway to your knowledge make any investigation concerning information which was being given by its agent at Edwards, Illinois? (Objection sustained.)

Q. Mr. Miller, can you give a list of the customers of the Buckeye Powder Company whom you induced to become such customers, from whom you obtained trade for the Buckeye Powder Company? A. I have a memorandum.

Q. Will you give a statement or a list of those customers? (Objection overruled.) A. Northwestern Improvement Company, Red Lodge, Montana; W. A. Talmadge Company, Red Lodge, Montana; Robinson Carey Company, St. Paul; and Devlin Miller Coal Company, Frontenac, Kansas; Chas. J. Devlin, Topeka, Kansas; Mt. Carmel Coal Company, Frontenac, Kansas; W. A. Wells & Company, Buckston, Iowa; Whitesbreast Fuel Company, Chicago; Lost Creek Fuel Company, Muchkanioch, Iowa; Peabody Coal Company, Chicago; Black Diamond Store, Philip Shool Company, Ottumwa, Iowa; American Coal Company, Evans, Iowa; C. Bailey, Fraser, Iowa; Carney Coal Company, Chicago; Chicago, Northwestern Railway, Chicago; Chicago, Burlington & Quincy Railway, Chicago; Chicago, Milwaukee & St. Paul Railroad, Chicago; Deering Coal Company, Chicago; Dealman Coal Company, Keller, Iowa; Farwell, Ozman, Kirk & Company, St. Paul; Hutchinson Brothers, Dawson, Iowa; Port Byron Land Association, Port Byron, Illinois; D. Heenan & Company, Streetor, Illinois; Rex Fuel Company, Busse, Iowa; Star Coal Company, Ottumwa, Iowa; Utica Cement Company, Utica, Illinois; Western Stone Company, Chicago. 944 945

Q. Now, Mr. Miller, what, if any, of the customers whose names you have read did you afterward lose—who afterwards ceased to become your customers?

Mr. Katzenbach: That is, if he has knowledge, personal knowledge.

The Court: Oh, yes. I understand he was general sales agent.

Mr. Katzenbach: But only for a limited period of time.

946 *John G. Miller—Direct*

By Mr. Katzenbach:

Q. When did your connection with the Buckeye Powder Company cease? A. When the Buckeye Powder went out of business——

The Court: Proceed; let us get along a little faster.

947 A. We lost customer by customer until we got down to a limited number; I remember, among others, we had a part of the trade of some of the smaller coal companies and the Black Diamond Store of the Phillips Fuel Company.

By Mr. Abbott:

Q. Now, who, if any, of the list of customers whose names you have given to us and whom you stated you afterwards lost, gave you any reasons why they ceased to do business with you?

948 A. As I solicited the trade from the customers, they informed me that——

Q. Don't state what they informed you. I would like to have you state now which of these customers gave you reasons; don't state what the reasons were at this time. A. The reasons for what?

Q. The reasons for leaving you—ceasing to do business with you? A. Well, W. A. Wells & Company informed me that they——

Q. Now, don't state at this time what they informed you.

The Court (to the witness): Distinguish between what they said to you and the fact that they did say something.

Q. Now, who is another one, if any? A. Charles J. Devlin.

Q. Another. A. Lost Creek Fuel Company.

Q. Any more? A. Northwestern Improvement Company.

Q. Just go right on and give a full list of all those that gave reasons? A. Chicago & Northwestern Railway; Chicago, Burlington & Quincy Railway; Chicago, Milwaukee & St. Paul Railway.

Q. Any others? A. Western Stone Company. I don't recall any others at the present time. 950

Q. I will now ask you, Mr. Miller, to state what reasons were given to you by any one of the customers whom you may select for not continuing to do business with you? (Objected to.)

Mr. Katzenbach: That is objected to on the ground that it clearly calls for a hearsay answer.

The Court: Yes; that brings the precise question, Mr. Abbott, that you want to discuss.

951

Mr. Abbott: That is the reason I asked the question, if your Honor please.

After argument, the objection was sustained, and plaintiff's counsel then and there excepted to said ruling and said exception was allowed by the Court.

Q. Did you enumerate all of the customers who had left you, Mr. Miller? A. As nearly as I can remember at this time. This all took place years ago, you must remember.

Q. In your efforts to secure business of any of the persons whose names you have given as customers of the Buckeye Powder Company, did you

952 *John G. Miller—Direct*

at any time make any reduction in your prices? A. Yes, sir.

Q. Can you name any customers of the Buckeye Powder Company to whom you made different prices for your powder at different times in order to secure their business? (Objection overruled.) A. The Black Diamond Store of the Phillips Fuel Company in one case.

Q. Do you recall what price you first obtained business of the Phillips Fuel Company, what that
953 price was? A. To the best of my knowledge, $1.35 per keg.

Q. Now, do you remember and do you recall what was the subsequent prices at which you obtained the business of the Phillips Fuel Company? A. The price was gradually reduced until we got down to 92½c. per keg.

Q. Were you at any time, after you began making reductions in price to the Phillips Fuel Company, were you at any time ever able to raise that price? (Objection overruled.) A. No, sir.

954 Q. Do you know whether the Phillips Fuel Company at any time purchased any powder of any other company manufacturing black blasting powder during the time that you were doing business with the Phillips Fuel Company as your customer of the Buckeye Powder Company? (Objection overruled.) A. The Phillips Fuel Company was under contract with Laflin & Rand to furnish the powder to the Black Diamond Store.

Q. Now, what do you know independent of any information which you received from Phillips Fuel Company of the Black Diamond Store as to the sources from which they obtained their powder supply?

Mr. Katzenbach: That question is objected to on the ground that there might be

other sources of hearsay testimony that that witness might have availed himself of.

The Court: I know. By this time Mr. Miller, I think, has heard my ruling on these questions and (to the witness) you must only give such information as you have obtained independently from what some person has said to you, unless such person may be the agent of the defendant.

A. I have no other information. 956

Q. Mr. Miller, during your experience as agent of the Buckeye Powder Company, did you ever obtain any information from your customers concerning shipments which had been made to them by the Buckeye Powder Company before you yourself had received notice of those shipments from the Buckeye Powder Company? A. No, sir. No, sir—with this exception: If there was a customer——

Mr. Graham: That is hearsay.

The Court: You base it upon the customers and upon the information obtained of 957
his other customers. That was not a source of information which was in line with what I permitted you to inquire about.

Q. Did you obtain such information from any source other than the Buckeye Powder Company? (Objection overruled.)

The Court: (To the witness) What is your answer?

A. No, sir—with this explanation, that I got advice from the customer after the shipments were made.

The Court: You don't understand the question. Read the question to him again

or perhaps you had better reframe the question again, Mr. Abbott.

Mr. Abbott: I will reframe it.

Q. Did you at any time while you were representing the Buckeye Powder Company receive any information from any source after shipments had been made to your customers that such shipments had been made, before you yourself received information from the Buckeye Powder Company, that
959 such shipments had been made? (Objection overruled.) A. No, sir.

The Court: So that it may be brought out and have it clear: (To the witness) The first information concerning the shipment came from the Buckeye Company?

The Witness: Yes, sir.

The Court: That clinches it, anyway.

Q. Did you at any time have any communication
960 with any official of the C., B. & Q. Railway Company concerning information which was given out by an agent of the company regarding shipments made to your customers? A. Yes, sir.

Mr. Katzenbach: That is objected to, that is the same question that was overruled, I think, on Friday.

The Court: You must first establish the basis for such a thing as that. You see that assumes that there was information.

Mr. Abbott: If he says he did have the information, then it may turn out it is not pertinent what that information was, but if I ask him what the nature of that information was and it appears to be improper——

961

The Court: You are assuming now there was such a course of dealing by the Railroad Company or some agent.

Mr. Abbott: I think it is apparent to Your Honor that the question at issue here is whether any investigation was made, and what the result of that investigation was.

The Court: Preliminary to that, you must show the situation which called for an investigation.

962

Q. Mr. Miller, did you at any time during this period that I have mentioned, while you were connected with the Buckeye Powder Company, receive any knowledge or information concerning the business of the Buckeye Powder Company in which you were interested from any other sources than the Buckeye Powder Company? (Objection overruled.) A. What information do you refer to?

Q. I am asking you whether you had information. Read the question so the witness may answer it.

(Question repeated by the Reporter.) 963

A. I had a——

Q. Answer that yes or no, please? A. Yes.

Q. All right, then, state what that information was. (Objection sustained.)

The Court (to the witness after argument): Very well, you may state the sources of your information, but not the information.

The Witness: Steve Bailey, Fraser, Iowa.

Q. Who was Steve Bailey? A. He was a customer at Fraser, Iowa.

964 *John G. Miller—Direct*

Q. What information did you obtain from Mr. Steve Bailey?

Mr. Katzenbach: That is objected to on the ground that the inquiry calls for hearsay testimony, being a statement made by a customer of this witness.

The Court: As the matter stands, I will exclude it.

965 To which ruling of the court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did you at any time make any investigation or institute any investigation as to the reasons for information coming to you in this manner that you have indicated? (Objection overruled.) A. Yes,

966 sir.

Q. Now, state what that investigation was. A. I saw the Burlington officials and called their attention to the situation and they made an investigation.

Q. Now, do you know what the result of that investigation was?

Mr. Katzenbach: Now, we object to that as being something that was communicated to this witness by others, and therefore hearsay testimony; and on the further ground that the witness——

The Court: I will sustain the objection unless you want your further grounds on the record.

To which ruling of the court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Mr. Miller, referring to the list of names which you gave this morning as being the names of 968 customers whom you knew were under contract with the Laflin & Rand Powder Company, while you were connected with that company, I will ask you to look at the list of names which has now been prepared by the stenographer, and state whether or not any of the persons named in that list were customers operating in the territory in which the Buckeye Powder Company was located and doing business (handing paper to witness)? A. Yes, sir.

Q. Will you indicate what companies there were that answered to the description of customers doing business in the Buckeye territory? 969

Mr. Katzenbach: Just wait a minute; has there been any definition of the boundaries of the Buckeye territory?

The Court: That would not be material so far as this question is concerned.

Mr. Abbott: I used the term "Buckeye territory" as a general term. The witness himself was operating in a certain district which was supposed to be serviceable from the Buckeye plants. I take it when he makes answer to this question that he knows whether or not——

The Court: Well, I will allow the question.

970 *John G. Miller—Direct*

A. All of those customers might be handled from the Buckeye plant.

Q. Now, did you at any time approach any of the persons whose names are given in this list for the purpose of selling them Buckeye powder? A. Yes, sir.

Q. Will you examine the list and state how many of those customers, what proportion, if any, you approached; in the first place, I will ask you whether or not you approached any of them? A. Do you
971 want the names—I didn't call on all of them; no, sir.

Q. Will you state whether you called on more of them—upon a larger proportion of them? A. Yes, sir.

Q. Then, for convenience, and to save time, will you give the list of those whom you did not call upon? A. The McAllester Coal Company at Buck, Indian Territory; Sebree Coal Company at Sebree, Kentucky; Baldwin Brothers at Clinton, Iowa; B. S. Chambers & Company, Pittsburgh, Kansas;
972 Crescent Coal Company, What Cheer, Iowa; Frank Frorer, Lincoln, Illinois; Gilbert Grocery Company, Portsmouth, Iowa; Illinois Central Coal & Salt Company, St. Johns, Illinois; Miller Brothers & Company, Mulberry, Kansas; Prussia Hardware Company, Fort Dodge, Iowa; St. Louis & Big Muddy Coal Company, Cartersville, Illinois; W. A. Swan, Pittsburgh, Kansas; Wabash Valley Coal Company, Lyford, Indiana; White Walnut Coal Company, Pinckneyville, Illinois; Atwood Coal Company, What Cheer, Iowa; Barrett-Hayden Coal Company, Weir City, Kansas; Columbus Coal Company, Stippville, Kansas; Fidelity Land and Improvement Company, Stone City, Kansas.

Q. Let me interrupt the witness once more so as not to go over it again. I wish you would make

your answer cover those which you solicited as well by mail or otherwise. If you will exclude those that you did not personally call upon, as I want to find out those whose business you solicited. A. Well, I have confined my reply to those solicited personally.

Q. Were any in that list——

The Court (to the witness): Were there any that you solicited by mail?

The Witness: I don't think there was. 974

By Mr. Abbott:

Q. In the entire list? A. With the exception of possibly the Gilbert Grocery Company of Portsmouth, Ohio, and the Sebree Coal Company, Sebree, Kentucky; that is a general statement; I would not say positively.

Q. Did you succeed in getting business from all the persons whose names are included in this list and who you say you solicited in this manner? (Objection overruled.) 975

Q. Be as brief about it as possible? A. No, sir.

Q. Were any reasons given to you——

The Court (to the witness): You understood the question?

The Witness: He asked me if I sold all of them.

Q. Were any reasons given by those persons why they did not or would not purchase powder of you? (Objection overruled.) A. On account of——

The Court (to the witness): You cannot state what they said.

Q. Yes or no.

The Court (to the witness): You can state whether they did give reasons for not buying.

A. Yes, sir.

Q. State what those reasons were——

Mr. Katzenbach: That is objected to.

The Court: That is, as given by them.

977 Q. (Continuing) —as given by them.

Objection sustained. To which ruling of the court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did any of the reasons which were given to
978 you involve the question of these contracts which were in existence?

Objection sustained. To which ruling of the court the plaintiff's counsel then and there excepted and said exception was allowed.

Q. Did any of the reasons which were given to you by these parties or any of them involve the question of special prices that had been made to them by any other manufacturer of powder?

Objected to and objection sustained.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Cross examination by Mr. Button:

Q. What price did you say you first received from the Phillips Fuel Company for Buckeye Powder? 980
A. As near as I can remember, $1.35.

Q. Was that sold directly to the Phillips Fuel Company or to this Black Diamond Store? A. I could not state positively, because some of the orders came into consign and bill the Phillips Coal Company, or Phillips Fuel Company or the Black Diamond Store; I could not state positively—but the Phillips interest.

Q. Can you state the date on which the first sale was made to one or the other of those concerns? A. I think the first sale was made about May or June, 981
1904.

Q. This list of customers that you have given here were formerly your customers when you were working for Laflin & Rand, as I understand your testimony? A. Not in every instance.

Q. Very largely so? A. Yes.

Q. Now, I show you three or four letters, Mr. Miller, and ask you if those letters bear your signature (handing papers to witness).

The Court: What are you handing the witness?

Mr. Button: Some letters and asking him if they bear his signature.

A. Yes, sir, those are mine.

982 *John G. Miller—Cross.*
George H. Kerr— Direct

Mr. Button: I would like to have those five letters marked for identification.

The Court: Yes, they may be.

(The same marked Defendant's Exhibits A to E, for identification.)

Mr. Button: That is all.

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983 GEORGE H. KERR, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Where do you reside, Mr. Kerr? A. Wilmington.

Q. What is your business? A. Manager of the Trade Record Division of E. I. du Pont.

Q. How long have you been occupying that po-
984 sition? A. Since 1903.

Q. Since 1903? A. Yes, sir.

Q. Who preceded you in charge of that division or that department if there was any such? A. Why, no one preceded me. The position was created in 1903.

Q. Will you describe what the nature of your duties are with reference to the duties of the department which you say you have charge of? A. The Trade Record Division is composed of cabinets for filing trade reports from salesmen, and bills or invoices made out to customers. They are filed both in under the customer's name alphabetically and geographically.

Q. Will you describe the general nature of these trade reports? A. Yes. The name and address

985

of the customer and approximately when they are going to be in the market again and the name of the purchasing agent, and what goods they handle.

Q. Will you state how many such trade reports are received by you, say within a month, I mean not within the last month, but during any month, just an estimate? A. Well, it will vary from possibly ten to fifteen thousand.

Q. Now, I will ask you to state the general character of the files which you have in your possession with respect to this fact: Do you keep them under different divisions? Do you have different divisions in which these files are kept? A. Well, you would have to specify the divisions. 986

Q. Well, do you have such divisions as are represented by different colors of paper? A. No, sir.

Q. Have nothing of that kind? A. Absolutely not.

Q. Do you have a division which you call by names of colors? A. No, sir.

Q. Has there ever been such a division? A. No, sir; not to my recollection; never had any such a thing. 987

Q. Do you get more than one copy of these trade reports—is there more than one made by the person who makes the trade report? A. Yes, four.

Q. Four copies made? A. Yes.

Q. What is done with each one of those copies? A. The salesman keeps one; one goes to the branch office from which he travels, the other is passed around among the officials of the company to be read and destroyed and the others comes to us to be filed.

And thereafter the witness produced certain documents called "Trade Reports" which were in the possession of the defendant E. I. du Pont de

988 *Alexis I. du Pont—Direct*
Robert S. Waddell, Jr.—Direct

Nemours Powder Company, and in his charge, and said documents were thereafter received and filed as Plaintiff's Exhibits Numbers 74 to 666, inclusive. And thereafter said George H. Kerr produced certain other documents belonging to said defendant which were in his charge, the same being contracts with consumers of black blasting powder, which documents were received and filed as Plaintiff's Exhibits 667 to 1090, inclusive.

989

And thereafter ALEXIS I. DU PONT, a witness for the plaintiff, testified that he is secretary of the defendant E. I. du Pont de Nemours Powder Company, and he produced certain other documents which were in his charge, the same being contracts with consumers of black blasting powder, which documents were received and filed as Plaintiff's Exhibit 1246, with sub-numbers from 1 to 309 inclusive; also Exhibit 1247-A to 1247-FF inclusive.

990

ROBERT S. WADDELL, Jr., a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Waddell, where do you reside at the present time? A. Monmouth, Illinois.

Q. Where did you reside during the year 1903, to and inclusive of 1909? A. Peoria, Illinois.

Q. Where did you reside previous to 1903? A. For about nine months previous to that, in Wilmington, Delaware, prior to that in Cincinnati, Ohio.

Q. Are you related to Mr. R. S. Waddell, Sr.? A. Yes, sir, son.

Q. What relation do you sustain to him? A. His son.

Q. In what capacity were you engaged, in what occupation were you engaged while you were in Wilmington? A. I was in the position of clerk in the sales department.

Q. Who had charge of that department? A. Mr. Waddell, Sr.

Q. Now, what were you engaged in while you 992
were at Peoria, Illinois? A. In the explosive business, in the manufacture of black blasting powder.

Q. In whose employ were you, or what concern were you connected with at that time? A. I was connected with the Buckeye Powder Company in the capacity of secretary and treasurer.

Q. What were your duties while you were employed by the Buckeye Powder Company? A. I had the keeping of all the records, and the general office work connected with both as a bookkeeper and in an official capacity.

Q. What was your official capacity? A. Secre- 993
tary and treasurer.

Q. Mr. Waddell, did you keep any records or any data with reference to the cost of powder as manufactured by the Buckeye Powder Company plant? A. Yes, sir.

Q. State what that data was? A. It was the cost. That was made up twice a month, based on our mill reports which gave us the necessary relation to the quantities of material used daily and the amount of powder manufactured daily.

Q. How did you arrive at the determination of the question of cost from that data? A. Our prices on raw materials were based on contract prices.

Q. What were the raw materials which you used? A. Nitrate of Soda, Sulphur and Charcoal.

Q. How did you determine the amounts of these various ingredients that were used in the manufacture of your powder so as to arrive at the question of cost? A. You mean the formula?

Q. Did you at any time undertake to determine the cost at which you were producing black blasting powder? A. Yes, sir.

Q. On what basis as relative to keg or tons or pounds, or what did you use as a basis? A. On a per keg basis.

995 Q. On a per keg. Tell us how you arrived at the determination of the cost per keg? A. The mill superintendent was instructed to use a certain percentage of each of the various materials which goes into the manufacture of powder and the quantities he used daily were sent in to me each morning. I figured these materials at the contract prices, added the freight and discount, the mill overhead expenses and the general overhead expenses to obtain the total gross cost per keg.

Q. What did you ascertain about the total gross
996 cost per keg by the method which you have indicated?

Mr. Katzenbach: That is objected to on the ground that it must have relation to some particular time and also that he would have to testify as to the cost of materials at that time.

The Court: I think there should be an indication as to time.

Q. Well, at any time during the years 1903 to 1908—but preliminary to that I will ask you whether there was a difference at any time in the cost of powder between those two periods? A. Yes, sir.

Q. Now, will you divide the periods—divide that

997

time into periods if you can and state the difference at the different times? A. Well, that would be rather hard to do Mr. Abbott, on account of the fluctuations on the nitrate of soda perhaps.

Q. Was the fluctuation in the nitrate of soda the only question which made any difference in the cost of powder? A. Practically, yes.

Q. That is the only thing? A. Yes, sir.

Q. Will you state what the fluctuation amounted to, the average fluctuation during the period when you began business and when you ceased it. A. 998
When we first started in the fall of 1903 we bought soda at $1.85 per hundred pounds; and we paid as high as $2.12 to $2.15 per hundred pounds later.

Q. Now, did you obtain your soda at the prevailing market rate? (Objection overruled.) A. Yes, sir.

Q. Do you know what the prevailing market rate on soda was from time to time, not now. I am not asking you now, but did you then know? A. Yes, sir.

Q. And did you obtain your soda at the prevail- 999
ing market rate? (Objection overruled.) A. We obtained it at the lowest contract price we could for a given quantity.

Q. What was the average price of powder per keg during the year—from the time when you began business and until the time you went out of business?

The Court: You mean by "price" the "cost"?

Mr. Abbott: Cost, I meant to say—the average cost:

By the Court:

Q. Did you do this daily or weekly or monthly, or

1000 *Robert S. Waddell, Jr.—Direct*

how did you determine the cost? A. Every fifteen days.

Q. Every fifteen days? A. Yes.

Q. Have you anything by which you can tell what it was that you determined at different times to be the cost of production? A. Only my own knowledge of the figures.

The Court: Well, that ought to be enough.

1001

By Mr. Abbott:

Q. Have you those figures at hand at the present time? A. No.

Q. Where are they? A. That I could not say.

By the Court:

Q. Do you remember them? A. Yes, sir.

By Mr. Abbott:

1002

Q. Now, then, give us your best recollection on the subject of what the average cost of black blasting powder was per keg at any time from the time you began business until you went out of business?

Mr. Katzenbach: I desire to enter an objection, to that question, because the witness testified that he kept a record of the cost every two weeks. He certainly can not have evidence of what the average cost was during the period of some five years. He has not said he made an average cost.

The Court: Average cost may be admissable for some purposes, but here, as the evidence now discloses that there was a fluctuation in the price of raw materials used and

 1003

as he determined every fifteen days what the cost was, he should be asked as to the particular time that you want to fix the cost of their product. I suppose that a particular time what the cost was is what you wish.

Mr. Abbott: If I understand the witness your Honor, he can only testify now from his recollection.

The Court: He says he remembers.

Mr. Abbott: Inasmuch as he made up the statement every fifteen days over this long period of time it is not probable or pre- 1004
sumable that he can remember what it was every fifteen days.

The Court: He knows whether the variation was large or small, he knows what the amounts of the fluctuations were that occurred, or he may know that.

Q. Was the variation in the cost of powder large or small during this period? A. Varied about 7 cents a keg based on the different prices paid for nitrate of soda.

Q. What was the minimum cost of powder at any 1005
time during that period?

Mr. Katzenbach: That is, if he remembers.

A. The lowest that I can recall now was 77 and a fraction cents per keg gross.

Q. What was the maximum cost of powder during the same period per keg? A. As near as I can recall between 83 and 84 cents.

Q. Now, this difference between the maximum and minimum was due as I understand you, to the fluctuation in the price of nitrate of soda? (Objection overruled.) A. Yes——

1006 *Robert S. Waddell, Jr.—Direct*

Q. Did the Buckeye Powder Company quit business, did it go out of business? A. It sold its physical assets.

Q. When? A. As I recall now, the 19th of September, 1908.

Q. Was that company succeeded by any other company in the manufacture of black blasting powder from the same plant? A. Yes, sir.

Q. What was the company that succeeded it? A. The Western Powder Manufacturing Company.

1007

Q. Did you have anything to do with that company? A. I kept the books for one year from the time the Buckeye sold out.

Q. Have you those books now in your possession? A. No, sir.

Q. Do you know where they are? A. I could not state definitely.

Q. Well, after you left the employ of that company, what did you do with the books that you had charge of? A. Turned them over to my successor, Mr. Allen.

1008

Cross examination by Mr. Katzenbach:

Q. Mr. Waddell, you stated, I believe, that you had made calculations of the cost of the product of the Buckeye Powder Company, is that so? A. Yes, sir.

Q. How frequently did you make the calculations of cost? A. Twice a month.

Q. The frequency—twice a month, for how long a period? A. Practically for the entire time we were operating our mills.

Q. That was then from October, 1903 to September, 1908? A. Yes, sir.

Q. And you approximately made them 24 calculations as to the cost of the product in each year? A. Yes, sir.

Q. The frequency of those calculations of costs were made was because of the frequency in the change in the price of the ingredients of powder I presume? A. Yes, but I would like to make an explanation on that.

Q. You can make those afterwards if you want to. A. I can not answer this particular question unless I do explain the answer.

The Court: You may do so.

A. (Continuing) In figuring our cost of powder, 1010
for instance, while we used—while we had a contract for that a certain definite price for a certain number of tons per year at the same time we added freight on that soda, and to be on the safe side, we generally used for our own information the current market price of soda as advised by the New York brokers in soda.

Q. Then in making the calculations of cost of the powder, of this ingredient, nitrate of soda, you did not enter the cost at what you were paying at the time under your contract for nitrate of soda, but at what you took from the newspapers or other 1011
data as the prevailing price of nitrate of soda, is that correct?

Objected to on ground that it was immaterial. Objection overruled. To which ruling of the Court plaintiff's counsel excepted and said exception was allowed.

A. No, sir; I would like to explain if I may, how we arrived at that.

Q. I will give you an opportunity, Mr. Waddell,

1006 *Robert S. Waddell, Jr.—Direct*

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Objected to on ground that it was immaterial. Objection overruled. To which ruling of the Court plaintiff's counsel excepted and said exception was allowed.

A. No, sir; I would like to explain if I may, how we arrived at that.

Q. I will give you an opportunity, Mr. Waddell,

1012 *Robert S. Waddell, Jr.—Cross*

we always treat gentlemen here courteously. What I want to know from you is this: In making up the cost of powder at any given time, did you, in figuring that cost, take the cost to the Buckeye Powder Company of the nitrate of soda used for that period at the price you were actually paying for it under your contract? A. Plus what it would cost us to replace that soda in case of a fire or loss.

Q. Well, then, as a matter of fact, you didn't calculate the cost of powder upon what you were
1013 actually paying at the time for nitrate of soda used in the manufacture of that powder, were you? A. We used our contract price plus what I have just stated.

Q. Now, in making up this manufacturing cost, did you enter that calculation or that cost price upon any books of the Buckeye Powder Company? A. No, sir; not in any book.

Q. Well, upon any document, paper, that became a matter of record in the files of the Buckeye Powder Company? A. They were merely memoranda
1014 that were given to Mr. Waddell, Sr., twice a month.

Q. So that then the memoranda of this cost after you had made it up passed from your possession into that of Mr. Waddell, Sr.? A. Yes, as a temporary memoranda.

Q. Well, do you know whether it was a temporary or a permanent memoranda? A. I know that it was not generally kept as a permanent record.

Q. How do you know that? A. Because I have used some of the sheets many times for scrap paper, using the back of the sheets.

Q. Then you did not give those then to Mr. Waddell, Sr., did you? A. After he was finished with them they were around the office of the company there and were not filed away as permanent record; they were loose sheets.

Q. Yes; then you did not consider that it was necessary to file those away as a permanent record of cost? A. Not after about the third or fourth sheet; it was only necessary to keep two or three current sheets on hand for comparative purposes.

Q. Well, now, then you did keep two or three current sheets on hand for comparative purposes, did you not? A. From time to time, yes.

Q. Now, where are those sheets? A. Well, that I couldn't say; it would be an accident if there is any of them alive today. 1016

Q. That is, that you are quite sure that they were dead, is that it? A. Well, I would say that there may be some in some of the books somewhere, but they were never taken care of to form a record of the Buckeye Powder Company.

Q. Now, in making a record of a sheet of cost what did you enter upon that sheet, Mr. Waddell? A. You desire a full description of that sheet?

Q. Yes. A. As I recall the first column was the total number of kegs manufactured for the fifteen days or the thirty days at the end of the month. 1017 Then there were columns following that which were indicated by names at the head of the columns for the different ingredients.

Q. Well, what were those? A. Nitrate of soda, sulphur and charcoal, and then there was a column for fuel, oils, general mill expense.

Q. What do you mean by general mill expense? A. Well, the tools and sundry purchases for use at the mills only; then there was a column for—

Q. That is any new articles that were bought? A. No, for instance, waste used in the engine room, things of that character, and we had a column on the sheet for the empty keg at the delivered price at the mills; then there was a column for traveling expenses, office and mill salaries, general office expense, which would include postage stamps and sta-

tionery and sundry small articles used in the office in the city; then there was—that is about all I can recall at the present time, that is, of the making up of the costs.

Q. Making up of the costs? A. Yes.

Q. Did you make any calculations for injuries to employes in the form of insurance? A. We reserved, if I recollect rightly, one cent a keg for each keg manufactured as a casualty fund for the destruction of property and a half a cent a keg, which
1019 was know as the personal casualty fund for the destruction of life. That was carried as an asset on our books.

Q. That was not embodied in the cost, then? A. No, that was not embodied in the cost of the manufacture of powder.

Q. Did you have any explosions there—they are customary in powder plants, are they not? A. Yes.

Q. You didn't have explosions? A. Yes.

Q. How many of them, to your knowledge? A. As I recollect two, two or three, I could not say
1020 definitely which.

Q. Now, then, did you add to the cost of manufacture any depreciation in your property in this item of cost of powder? A. Not on the cost sheet, no.

Q. Did you have any item for advertising? A. Yes, sir, that was included in the general expense.

Q. Sending out circulars to the trade? A. Yes.

Q. That was included as part of the cost? A. That is in the office end of the cost.

Q. Now, did you add in the cost, the powder that you gave away as samples? A. That was taken out at the end of the year, as I recollect under a donation account.

Q. Well, but then it didn't figure in this item of cost every two weeks? A. No, because of the very few——

Q. I am just asking you whether it did figure or not? A. No.

Q. Now, then, did you always pay the same price for labor during the time that you were manufacturing powder? A. No, sir.

Q. That is, I suppose your labor increased, did it not, in wages? A. It increased, depending on the number of kegs we were manufacturing.

Q. Well, you mean by that that if you were running full, the cost of your powder was less per keg than when you were running your plant, we will 1022
say, at fifty per cent of its capacity, is that correct? A. That would naturally follow, yes, sir.

Q. Then the price would fluctuate considerably by reason of the fact of whether you were running your full capacity or below full capacity, wouldn't it? A. That is, the labor account would.

Q. Well, wouldn't that affect the cost of overhead expenses, office expenses, selling expenses, they all went on, didn't they? A. Yes, sir.

Q. So that when you weren't running full capacity then your powder cost you more per keg? 1023
A. Yes.

Q. Well, now, have you any record of the periods in your books at all so that we could tell at these different periods of time, for instance in January, 1905, as contrasted with January, 1906, whether you were running at half capacity, full capacity or three-quarter capacity? A. I am sure I couldn't give you any information on that because I ran the office end of it and did not operate the mills at all.

Q. But all that enters into this matter of costs at any given two weeks, does it not? A. Yes, sir.

Q. Now, then, during the period that you were calculating this cost, did you advance the wages of your employees? A. I considered only the lump amount of labor expended.

Q. Well, that is not responsive to the question; I am asking you whether you advanced the amount that you were paying to the labor in your mill between the years 1903 and 1908, that is, per man, per hour, per day? A. I couldn't say; I didn't have anything to do with that.

Q. You were treasurer of the concern? A. Well, I considered just the lump amount paid each man every two weeks.

1025 Q. Didn't you make up the pay rolls? A. Yes, sir.

Q. Well, then, you would know that, wouldn't you? A. Well, I don't recall now any specific case of where any particular one man—where we increased in from one to eight years in his wages.

Q. I am not speaking about years; I am speaking about dollars, Mr. Waddell, or cents per hour. A. We paid per day.

Q. Did you pay for ordinary labor—— A. We paid for ordinary labor on a per day basis.

Q. On a per day basis? A. Yes.

1026 Q. Well, now then, between the years 1903 and 1908, did you increase the per diem of your labor employees? A. Yes, I should think there was an increase in that length of time.

Q. Then that was an element that entered into the cost, was it not, and the profits? A. Yes, but at the same time we increased our capacity of the plant.

Q. Well, you increased your capacity of the plant—— A. Yes.

Q. Well, now, was that done simultaneously with the increase of the per diem to the employees? A. It was, yes, because we put one man in charge of a mill as a head man of that mill and paid him twenty-five cents more per day than the first or second wheel man, for instance.

Q. Well, now when was the capacity of your plant increased in what year, in what month? A. That I don't recall; I think it must have been about 1904 or 5; I don't remember the date.

Q. What was the increase? A. $25,000 in the capital stock——

Q. Now I mean in capacity? A. Oh, well, we originally started with a capacity of 400 kegs per day and the increase as I recollect was to a capacity of 800; 600 and then 800.

Q. So that you doubled your capacity. Was 800 1028 kegs per day the last capacity of your mill? A. As I recollect now that was.

Q. Upon this question of nitrate of soda. When you had a contract for nitrate of soda at a given price, did you ever sell your right to that nitrate of soda under your contract at an advance? (Objection sustained.)

Q. Mr. Waddell, in making up the cost of the product of the Buckeye Powder Company what did you do in entering the cost of the nitrate of soda where the market price of the nitrate of soda 1029 at the time of determining that cost was below your contract price? A. We took the contract price—I don't believe I quite understand, was it below or—

(Question repeated).

A. I don't recall any instance of that kind.

Q. During the entire time that you were manufacturing powder there was no instance of where the market price of nitrate of soda was below your contract price? A. I don't recall it now, but if it had been we would have used the contract price.

Q. You were also asked in regard to the cost sheets, as to the manner in which you made up your statement as to the cost of powder; I show you certain papers and ask you to examine them

1030 and state whether or not these have any relation to those cost sheets? A. Yes, sir.

Q. Now, did you have anything to do with preparing those papers in your hand? A. I prepared these two (indicating).

Q. Did you have anything to do with the other one? A. No, sir.

Mr. Abbott: I ask to have the first two documents marked for identification.

(Papers marked P 1113 and 1114 for iden-
1031 tification.)

Q. Did you know these documents were in existence while you were testifying? A. Yes, sir.

Q. How long from the present moment has it been when you discovered that those papers were still in existence? A. About Twenty-four hours from now.

Q. Are those papers all of the cost sheets that you know of that are in existence at the present time? A. So far as I know.

1032 *Recross examination by Mr. Katzenbach*:

Q. Mr. Waddell, you have testified here as to certain cost sheets that you supposed were not in existence when I was examining you as to the cost of the product of the Buckeye Powder Company. Have you upon your books of account anything that shows the cost of the product of the Buckeye Powder Company? A. Except taken as a whole.

Q. But taken as a whole your books would show the cost, and the cost could be computed from the books of the Buckeye Powder Company, could it not? A. I doubt if you would get information covering a definite enough period to figure the cost, because the soda would lap and all expenses lap over and there would be no distinguishing link for periods.

Q. Then the cost for the different periods varies so that you could not obtain any specific knowledge from your books of account, of the cost of the product, is that what you mean to say? A. Not at this late day, unless you considered as a whole, took the whole of the powder manufactured over all the years.

Q. And as a whole, you mean the cost of the entire product between the time you went in business and ceased business? A. Yes, sir.

1034

Deposition of HARRY PAIGE, a witness for the plaintiff, was read as follows:

Q. Mr. Page, where do you reside? A. In Peoria.

Q. How long have you resided in Peoria? A. 24 years.

Q. What is your age? A. 37 years old, I am.

Q. What business are you in at the present time? A. Commercial agent for the C. B. & Q. Railway.

Q. How long have you been such agent? A. 1035
That title I have had about a year and a half. My title was contracting agent, but I have been in the same duties for the last fifteen years.

Q. What position did you occupy in the C. B. & Q. in the years 1903, '04 and '05? A. The same as now.

Q. Did you know at that time the Buckeye Powder Company? A. Yes, sir.

Q. Did you know R. S. Waddell, the president of that company? A. Yes.

Q. State whether or not during the years 1903 or '04 you had any business in the Buckeye Powder Company or with Mr. Waddell as the President? A. Yes, sir.

Q. Kindly state what that business was. A. If my memory serves me correctly, it was in the early part of 1903, or possibly the latter part of 1902, that Mr. Waddell first come to locate his plant and it was through me that it was located around the line of the Burlington Railroad at Edwards station.

Q. Were the products of the plant shipped over your line exclusively? A. Exclusive.

Q. Your lines were the only lines that had access to his mill? Yes.

1037 Q. You may proceed. A. My dealings with him were all the dealings that he, as representative of his corporation, would have with any line who was his sole means of transportation either in or out of his mills.

Q. Where were his mills located? A. Near Edwards Station, about one or one and a half miles west thereof.

Q. You received at Edwards Station all the product of the Buckeye Powder Company for shipment? A. We received it at their own switch, but our agent at Edwards Station was the agent who

1038 would receipt to them for the company.

Q. I will ask you to state whether or not you knew or had any relations with a man by the name of Platt? A. There was a man by the name of Platt from Kansas City. He came here either Decoration Day or Labor Day, 1904; it has been a long time back, and I didn't make any particular note of it, but I remember it was a holiday—it was either one or the other of those days.

Q. Did he come to see you, or did you go to see him? A. He came to see me.

Q. What, if anything, did he state to you at that time? A. He asked me to come over to the hotel and see him'.' (Objected to and objection overruled.) A. He asked me to come over to the hotel and see him; he wanted to talk to me.

Q. What hotel? A. The National Hotel, Peoria, Illinois. He said that he was desirous of obtaining information——

A. The National Hotel, Peoria, Illinois, he said that he was desiours of obtaining information of the destination of the shipment, especially a carload shipment from the Buckeye Powder Co., and that he understood that I handled their rates, and that the copies of billing for all their shipments, came to my office, and if I was willing to furnish him with information, he would pay me $5.00 a letter understanding I was to write one letter a week. 1040

Q. Did he say whom he was representing? A. He did not.

Q. Did he state to you where the letters were to addressed to him?" (Motion to strike out the answer denied.) "A. The gentlemen presented to me a card, which I have not got. If my memory serves me correctly. I gave it to Mr. Waddell, there was an address on it at Kansas City, Missouri, but what that address was, I cannot say now.

Q. Where did this conversation take place? A. In the rotunda of the old National Hotel, Peoria. 1041

Q. I wish you would proceed to relate what further occurred at that conversation? (Objection everruled.) A. I told Piatt that was a little new for me, that I hadn't been selling out on a proposition; that I was human, and probably had a price, but I felt quite sure that it wasn't $30 a month; but that I would take the matter under consideration and let him know a little later in the day. I then telephoned to Mr. Waddell, that I wanted him to meet me; he did, and I laid the proposition before him, more as an evidence of good faith with him, as he had previously complained that somebody was giving out information to his competitors as to his business, and I took that means of

1042 *Harry Paige—Direct.*

assuring him that, at least our office, or the people that he was dealing with directly, were trying to be honest and square with him, and that we would not lend ourselves to anything of that kind without his knowledge and consent. He advised that I pass the matter over and have nothing to do with it. I then called on Mr. Piatt and told him I couldn't do it.

Q. You have just stated all the conversation that you had with Mr. Waddell? A. I have not stated
1043 anything in particular as to the conversation with Mr. Waddell; I expect I told him of the circumstances, and he advised that I have nothing to do with it whatsoever, and to let the matter drop, which I did. There was, perhaps, a great many other things said at that time that would have no particular bearing upon the evidence in this case, or that had nothing to do with Piatt. (Objected to and objection sustained.)

Q. What if anything transpired after that conversation with reference to Mr. Piatt, did you see
1044 him further? A. I don't ever remember seeing Mr. Piatt again; I heard from him.

Q. When and how? A. It must have been four or five years after that I received an announcement of his joining some other partnership in law in Kansas City, and even that address I haven't got, I didn't keep it. (Motion to strike out answer sustained.)

Q. Did Mr. Piatt state to you at any time what business he was in? A. My mind is not absolutely clear as to whether he did or not. I talked to Mr. Waddell about it at that time, and I am not sure whether my knowledge or thought that he was with the du Pont people came to gradually forming the opinion by putting other things together, or whether he actually told me. If I had retained his card,

I could answer more directly some of these questions; but I didn't, it was not material or interesting to me at that time. (Motion to strike out answer sustained.)

Q. On this card which you have testified to, which he gave you, did it state his business upon it? (Objected to and objection overruled.) A. I don't remember; the card carried his name, the town, Kansas City, Missouri, and there was something in the corner—whether it was the number of his office, the same as 701 Jefferson Building, or whether it carried the firm he represented, I could not swear to at this time. 1046

Q. You gave that card to Mr. Waddell? A. Yes, sir, in showing Mr. Waddell who it was that called upon me. (Motion to strike the last answer denied. Motion to strike out the entire deposition denied.)

ELLIOTT S. RICE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 1047

Direct examination by Mr. Abbott:

Q. Mr. Rice, where do you reside at the present time? A. Chicago.

Q. Where did you reside during the years 1903 and 1908 inclusive? A. Chicago.

Q. What business were you in during those years? A. Up to September, 1905, I was the agent of the E. I. du Pont de Nemours & Company and the Hazard Powder Company and the Austin Powder Company.

Q. What territory did your agency cover? A. It covered a part of the time, a part of Indiana; all of the time Illinois, excepting the extreme south-

1048 *Elliott S. Rice—Direct*

ern portion; Iowa, Nebraska, and some parts of Colorado.

Q. And was your office known with reference to the principal office at Wilmington—did it have a name? A. The office—the office of du Pont & Company.

Q. The office of du Pont & Company. Was it a branch office or was it a principal office or what? A. It was a branch office.

Q. A branch office, what was your title as man-
1049 ager of that office? A. General agent.

Q. Now during that time that you were manager of the office at Chicago, did you ever have occasion to make any contract with consumers of black blasting powder for sales of black blasting powder to them? A. With the operators; yes, sir.

Q. With the operators? A. Yes, sir.

Q. Have you got a list of those contracts with you? A. I have not.

Q. Have you got any data or anything from which you can refresh your memory as to the con-
1050 tracts which were made by you during your incumbency of that office? A. I have not.

Q. Did you ever have such a document? A. I had a list in the Government suit, so called.

Q. Had a list in the government suit? A. Taking testimony in that government suit.

Q. I will show you then Volume 1 of the testimony of the defendant's record in the suit of United States of America, Petitioner, against E. I. du Pont de Nemours & Company which is pending in the United States Circuit Court for the District of Delaware. Is that the suit you have in mind? A. I think so.

Q. Now I refer you to pages 318 and subsequent pages and ask you to state whether the data set forth there is the matter which you have referred

to as having given to the Government in that action (handing book to witness).

Mr. Button: Which page?
Mr. Abbott: Page 318 I think.

A. Yes; I think this list was taken from that—this record was made from that list which I had there at that time.

Q. Now, this list which you had at that time was that a list which you prepared yourself? A. 1052
It was prepared in my office by a stenographer.

Q. What did it consist of? A. The book?

Q. Yes. A. Consisted of the names of those with whom I had contracts, the period covered by the contracts, the price and the discount or rebate.

Q. In giving the information which is set forth on the pages which you have just examined, did you use that book? A. Yes, sir.

Q. Are you able to say then at the present time whether the statement in the record which I have just shown you is a true and correct statement of the list of the contracts that have been made by 1053
you on behalf of the du Pont Powder Company? A. I never compared it, but I believe it to be.

(The same received in evidence and marked Plaintiff's Exhibits 1143 and 1144.)

Cross examination by Mr. Button:

Q. Mr. Rice, did you negotiate the most of these contracts yourself that are in this list or these lists? A. Personally?

Q. Yes. A. Very few of them.

Q. They were done by men under your direction? A. Yes, sir.

Q. In your office? A. Yes, sir.

Q. And this first list, I understand, is a list of contracts made in 1903 and thereafter as you recollect it? A. Yes.

Q. 1903 and 1904? A. They were made or renewed.

Q. And with almost or with very few exceptions, they were contracts in renewal of others that had theretofore existed? A. Yes, sir.

Q. Those others being mentioned in the second list which was put in here, do you recollect? A.
1055 I think so.

Q. I don't know as this has been shown to you. After you put in the first list, did you furnish the second list, showing the previous contracts with the same customers? A. I furnished the first list at the request of the attorneys, read it into the record when giving testimony. As to the second I do not remember. It seems to be a repetition.

Q. Don't you recollect that that second list was made up from certain red ink numbers which you had on that original book which referred to the numbers of the previous contracts? A. Yes.

1056 Q. The contracts as I understand it, were contracts for the sale of the product of the du Pont Company were they not and the Hazard? A. du Pont and Hazard; yes, sir.

Q. Was there anything new in the course of your business in the way of making contracts for the furnishing of powder to the coal operators at that time? A. No.

Q. When did you first take the agency at Chicago, Mr. Rice? A. In February, 1883.

Q. In February, 1883, were you selling the powder to coal operators under written contracts? A. Yes; we made some contracts as early as 1883.

Q. Did you make contracts for the furnishing of powder to the coal operators practically continuously from that time down? A. Yes, sir; I

believe we either made contracts or renewed them.

Q. In your experience of making contracts, was there any new system of making contracts inaugurated in 1897 or thereabouts? A. I don't know of any such thing.

Q. And your territory covered a portion of the territory did it in which the Indiana Powder Company sold powder? A. It did earlier.

Q. I think that is all. There is one more question. When did you cease to be the general agent there at Chicago, Mr. Rice? A. I think September 1, 1905. 1058

Redirect examination by Mr. Abbott:

Q. Have you any relations now to, or connection now with, the defendant in this case, the E. I. du Pont de Nemours Powder Company. A. I am not connected with the sales dapartment in any way and have not been since the 1st of September, 1905. I am taking care of some property for Col. du Pont.

1059

Q. Do you receive any salary or any compensation in any way directly or indirectly from the defendants in this suit? A. Yes, sir; I receive a salary under contract.

Q. At this time? A. Yes, sir.

Q. And have ever since you left the office—management of the office—in 1905? A. Yes, sir.

Q. You have testified here concerning certain contracts which you made as early as 1883. Will you state what those contracts were and with whom you made them? A. I could not at this time.

Q. Cannot you give the names of any one of them? A. No; I would not want to undertake to give the names at this time of the contracts.

Q. Can you give the names of any person or com-

pany or corporation with whom you made a contract previous to 1897? A. Yes; I made the first contract that I ever made for the sale of du Pont blasting powder at Erie, Pennsylvania, in 1878 or 1879.

Q. Who was that with? A. J. Lewis Taylor.

Q. J. Lewis Taylor? A. Yes, sir.

Q. Did you make any other contract with anybody that you can recall? A. No; I could not state positively.

1061 Q. As a matter of fact, you do not wish it to be understood that you had a system of making contracts previous to 1897, do you? A. No system about it, simply made contracts wherever they were desired or where we desired them.

Q. I would like to have you tell how many such contracts you made previous to 1897, I mean as to number. A. I could not say definitely.

Q. Will you state it was five? A. Previous to 1897?

Q. Yes. A. Well I should say it was a good
1062 many more than that, I cannot fix the number.

Q. Let me try to get your understanding of it, you say it was more than five? A. Yes.

Q. Will you state how many more than five it was? A. No, sir.

Q. Have you any idea? A. No, sir.

Q. Was it 500? A. No, sir; I don't think it was.

Q. Was it 250? A. I could not state.

Q. Was it 100? A. You mean all contracts all together?

Q. Yes; all contracts. A. Oh, I think perhaps.

Q. You think it was? A. I think so.

Q. Out of that list of 100, cannot you give us the list of the names of a single one outside of this one that you have given? A. Yes; we had a contract with the Des Moines Coal and Mining

1063

Company, Des Moines, Iowa, prior to that time. We had a contract with the Chrystie Coal Company of Des Moines, Iowa, part of that time. I think we had a contract with the Whitebreast Fuel Company part of that time, an Iowa corporation. It is impossible to give them all.

Q. These are all you are able to recall at this time? A. Yes.

Q. Do you know anything about any Gunpowder Trade Association wherein the matter of contracts was regulated or attempted to be regulated? A. 1064
No, sir.

Q. You don't? A. No, sir.

Deposition of ERNEST HAUSER, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

1065

Q. Mr. Hauser, where do you live? A. In the city.

Q. Peoria? A. Yes.

Q. How long have you lived in Peoria? A. I have lived in Peoria five or six years.

Q. Where did you live previous to going to Peoria? A. At Edwards.

Q. Illinois? A. Yes, sir, Edwards, Illinois.

Q. And previous to that where did you reside? A. Fontanet, Indiana.

Q. And previous to that, where did you live? A. At Seward, Pennsylvania. I left Indiana and went to Seward, Pennsylvania, and then went back to Indiana.

Q. What was your business in Seward, Pennsylvania? A. Glazeman.

Q. Glazeman in a powder manufactory? A. Yes, sir, in a powder mill.

Q. What was your business at Fontanet? A. Working in a powder mill.

Q. In what department? A. In all departments.

Q. And what was your business at Edwards? A. Head glazeman at Edwards.

Q. And what is your business now, and since you left Edwards? A. Carpenter.

1067 Q. Who were you engaged with at Fontanet, Indiana? A. The Indiana Powder Company.

Q. Working for them at their powder mills? A. Yes, sir.

Q. In whose employ were you at Edwards, Illinois? A. The Buckeye Powder Mill.

Q. Were you acquainted with any other employees of the Buckeye Powder Company? A. I was.

Q. Did you know any of those employees previous to going to Edwards, Illinois, to work for the Buckeye Powder Company? A. Yes.

1068 Q. Where did you know them? A. In Fontanet, Indiana.

Q. How did you first learn of the Buckeye Powder Company? A. Why, Mr. Anderson got a letter from Mr. Waddell, asking him to come over and take charge of this mill.

Q. What Mr. Waddell do you have reference to? A. Mr. R. S. Waddell.

Q. And what position did he occupy, do you know, in connection with the Company? A. I think he was manager, or president of the company.

Q. You say you received a letter from him? A. No, my brother-in-law, Mr. Anderson.

Q. Have you got that letter? A. No, sir.

Q. Do you know where it is? A. I do not.

Q. Did you ever see it yourself? A. Yes.

Q. Now, you may state what, if any influence that letter had upon your movements? A. Why, several of us were talking of going to Peoria, after Mr. Anderson received the letter; they said there was a new mill, and we thought we would like to change.

Q. Did you have any discussion with any of the other employees at Fontanet, with reference to going to Edwards? A. I did.

Q. About when was it that you first got the information concerning the Buckeye Powder Company plant at Edwards? 1070 A. Along in July.

Q. July of—— A. About the mille of July.

Q. What year? A. 1903.

Q. Did you acquire any other information from any other source except as you have stated, regarding the plant which was then established, or was about to be established, at Edwards, Illinois, by the Buckeye Powder Company? A. Yes; there was a notice stuck up in the wash house of the plant at that time.

Q. Referring to the Buckeye Company? A. Yes. 1071

Q. Have you got the notice? A. No, I haven't.

Q. Do you know where it is? A. No, I do not.

Q. What were the contents of that notice? I will ask this question: By whom was the notice signed? A. Maddux.

Q. Do you know what his initials were? A. I don't remember.

Q. Do you know what position, if any, he purported to present? A. He was assistant general manager.

Q. Of what? A. Of the E. I. du Pont de Nemours Company.

Q. Was the notice signed by the company named? A. Yes, sir, the E. I. du Pont de Nemours Company. (Objection overruled.)

By Mr. Katzenbach:

Q. Do you know by whose authority this notice was posted of your own knowledge? A. The superintendent put it up.

Q. Did you see him put it up? A. Yes.

Q. Do you know whether he had any authority to put it up? A. I don't know whether he did or not; I suppose he did.

1073 Q. Now, Mr. Hauser, state to the best of your recollection what the contents of that notice was, and as near as you can recall the form and language used in the notice and the matter of signatures. (Objection overruled.) A. The notice read that Mr. Waddell had declared himself an enemy of the E. I. du Pont Company, and any employee that got employment at the Buckeye Powder Mill would never need apply to any of the mills controlled by the E. I. du Pont Company.

Q. How was it signed? A. It was signed by Mr. Maddux.

1074 Q. Any other notice? A. It was signed "E. I. du Pont de Nemours Company by Mr. Maddux" dated at Wilmington, Delaware.

Q. Where was this notice posted? A. In the wash house.

Q. What was the wash house? A. Where all the men changed clothes, and washed after the days' work is done.

Q. Did any other of the employees of the mill see this notice to your knowledge? A. Yes, sir.

Q. Was the notice discussed? A. Yes.

Q. Do you remember the date that the notice was posted? A. Not exactly.

Q. Well, can you state about when it was? A. It must have been along about the 25th of July or somewhere along in there.

Q. Of what year? A. 1903, 25th or 26th.

Q. Do you know where the notice was dated? A. Wilmington, Delaware.

Q. What was the practice of the Indiana Powder Company, if you know, with reference to the posting of notices—that is, as to where they were posted—that is, notices that were intended for the men? A. In the wash house.

Q. Do you know what was the custom? A. I do.

Q. What was that custom? A. They always stuck them up in the wash house, all the notices 1076
to all the men.

Q. Now, how long were you employed at the Buckeye Powder Mill at Edwards? A. About two years and a half or three years.

Q. Did you know any of the other men employed at that mill during that period? A. Yes, sir.

Q. Did you know them before you entered the employ of the Buckeye Powder Company? A. Yes, sir.

Q. Were they or were they not, men that have had experience in other powder mills where you 1077
have worked? (Objection overruled.)

Q. What other mills had these other employees come from, according to your own knowledge? A. The Indiana and the Northwestern.

Q. Where was the Northwestern mill located? A. It was on the C. & E. I. Railroad; I don't remember what the name of it is now.

Q. How far from Peoria? A. About twenty miles from Terre Haute.

Q. Indiana? A. Yes, sir.

Q. Do you know of any of the men who came from the Indiana Powder Company to work for the Buckeye Powder Company who afterwards left the employ of the Buckeye Powder Company? A. Yes, sir.

Q. Do you know where these men obtained employment afterwards? A. Yes, sir.

Q. State where they obtained employment? A. At the United States mill.

Q. Where was that located? A. Coalmont, Indiana.

Cross examination by Mr. Katzenbach:

Q. Were you ever employed at the mills of the
1079 Northwestern Powder Company? A. No, sir.

Q. Were you ever in those mills? A. No, sir.

Q. How do you know, then, that any employees of the Buckeye Powder Company were employed in the Northwestern Powder Company's Mills? A. Because they left Fontanet and went over there.

Q. Did you ever see them there? A. I seen them go over there.

Q. I asked you whether you ever saw them there. A. No, sir.

Q. Then you don't know whether they were there
1080 or not of your own knowledge? A. No, sir.

Q. Did you ever see any employees that were at the Buckeye Powder Company and the mills of the United States Powder Company? A. Yes.

Q. Have you been at the mills of the United States Powder Company? A. Yes.

Q. Did you work there? A. No, sir.

Q. Did you see any there? A. I did see——

Q. Name those you saw? A. George Hauser, Henry Justice, George Barder.

Q. Is that all? A. Yes, sir.

Q. Where are the mills of the United States Powder Company located? A. Coalmont, Indiana.

Q. Who operates those mills? A. They are, or they used to be operated by Norman Rood, Elmer Sergent.

1081

Q. What company operates them? A. I don't know what company; it is a United States Powder Company.

Redirect examination by Mr. Abbott:

Q. Do you know of your own personal knowledge, of a single employee that left the Indiana Powder Company after that notice was published as you have stated, that ever obtained employment again 1082
at any of the mills of the E. I. du Pont Company or any of its associates? (Objected to and objection sustained.)

Recross examination by Mr. Katzenbach:

Q. I ask you whether you would testify that no employee who had been with the Indiana Powder Company at Fontainet, and had entered the employ of the Buckeye Powder Company had been subsequently thereto employed by the E. I. du Pont de Nemours Powder Company? A. No; I wouldn't say that, not to my own knowledge; I do not know 1083
any that did, but I wouldn't say anybody did not.

Deposition of THOMAS J. REYNOLDS, a witenss produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Reynolds, where do you reside? A. At Collinsville, Illinois.

Q. How long have you resided at Collinsville, Illinois? A. I guess about 35 years.

Q. What is your business at the present time? A. I am sub-district president of sub-division 6 of District 12 of the United Mine Workers of America.

Q. What is District 12? A. That is the State of Illinois.

Q. And what is sub-district 6? A. That takes in—I don't know that I can name the counties—it will run as far north as Gillespie; we will take in all that field up there. I could name the places, I guess.

1085 Q. No, just generally? A. And then we go as far south as Willettsville and as far east on the B. & O. as Salem and on the Vandalia as far south as Centralia and on the——

Q. How long have you held your present office? A. I think from about 1906.

Q. To date? A. Yes, sir; five or six, six, I think.

Q. Previous to that time did you hold any office in the U. M. W. of A.? A. Yes, sir; I was first elected president of a local union at home in Collinsville —that was in 1897. I think it was in 1898 I was elected a member of the State Executive Board of
1086 District 12; later I was elected state vice-president; I served two years as state vice-president, and one year as president.

Q. When was it that you ceased to be president of the U. M. W. of A.? A. I believe it was in 1904 or 1905——

Q. The initials U. M. W. of A. stand for what? A. United Mine Workers of America.

Q. What is the smallest organization in the United Mine Workers of America? A. I guess the local union.

Q. And what field does that cover? A. Well, the local unions in our state may have jurisdiction over one mine or several mines, in fact, sometimes there is two local unions in one locality—one may have

jurisdiction over one mine and the other a couple of mines; but there can't be any two mines in one local union, and there can be several mines in one local union.

Q. What is the next organization in the United Mine Workers of America? A. The Sub-district.

Q. And the next? A. The State.

Q. And the next? A. The National, and International.

Q. After you severed your connection with the United Mine Workers of America in 1904 or '5, as 1088
you have testified, what kind of work did you take up? A. I went to work for the Buckeye Powder Company; I worked for them, I think, ten months, as near as I can recollect.

Q. What did your duties, while you were working for the Buckeye Powder Company require of you? A. Well, we tried to sell powder and we also took the samples into the mines wherever there was an opportunity of selling it, and tried it out to see whether it was all right or not, whether we would get any business there. 1089

Q. State whether or not you have had experience in mining operations yourself? A. Yes, several years' experience; I don't remember just how many.

Q. As a practical miner? A. Yes.

Q. You are a practical miner? A. Yes, I have a certificate to that effect.

Q. Have you ever handled powder in your work in the coal mines? A. Yes, I have dug coal with powder and without it.

Q. Now, in performing your duties for the Buckeye Powder Company did you at any time enter the mines? A. Yes, sir; wherever they had samples of our powder trying them I always went down to see what it was doing, to see how it worked.

Q. What territory did you cover in your work

1090 *Thomas J. Reynolds—Direct*

for the Buckeye Powder Company? A. Well, I covered a good deal of the State of Illinois and I made a few trips I believe into Iowa and I believe one trip into Michigan; most of my work was in the State of Illinois, in the Peoria district and the Springfield district and down there in this field.

Q. Now, how long did you say you continued with the Buckeye Powder Company? A. I think I worked for them about ten months, as near as I can recollect.

1091 Q. What, if anything, caused you to cease your relations with the Buckeye Powder Company? (Objection overruled.) A. Well, we were having pretty tough sailing and I felt as though I had a chance. I thought I had a chance to go back with the miners and I feared that the company, with the opposition they were having, were not going to be able to live very long and I thought I had better take this chance to go back with the miners, and I did.

Q. State what facts, in a general way and in your own way, caused you to reach the conclu-
1092 sion which you have just indicated. (Objection overruled.) A. Well, there were some of the mines I was in where there was objections made to the powder, even by men who had not use dit at all. In one mine in particular, and that was at Marysville, Illinois; they took samples down there to try it; I don't remember how many kegs there was, but they didn't use it, and they said the men were bowling the powder out, and I said I would like to see what objections they had. We went into one place in particular, and the committee said to the men, 'How is the powder?' And he said, 'the new powder is no good, its rotten.' 'Where do you keep your powder?' he said, and he told him, and we went and looked and there was not a grain of Buckeye Powder there. One of the men at the shaft

bottom began to holler about the powder and the manager said to him, 'I don't think you ought to holler until you get some of it, you don't know whether it is good or not'; but he said, 'I don't want to try it.' A few instances of that kind in several places led me to believe that the powder was being bowled out and wherever we got a fair test I found not so much opposition to it by the miners; but they didn't give it a fair test, and that led——"

1094 The Court: That part you needn't go on with.

Mr. McCarter: We think the whole answer should go in.

The Court: If you want it in, it may go in.

Mr. McCarter: As your Honor has permitted some of it to go in, we object to any answer going in, but we object to it being split.

The Court: Let the record show that this is a request on your part to have the whole answer go in; the record must show the situation. 1095

Mr. McCarter: Of course, the record will show what is right, but the request was made —I don't want any misunderstanding upon that, upon the theory that it is improper to split an answer in two.

The Court: You are entitled to have it, only I want the record to show that it is upon your request.

(Balance of answer read, as follows): But they didn't give it a fair test, and that led me to believe that there was some force at work that this company wouldn't last long. Everybody said there was a powder trust, and I thought if we had to go

against that opposition, sooner or later I would be out of a job, and I had better take this chance, and the job I left was paying me more wages than the one I had.

Q. I will ask you to state whether there was any difference that you noticed in going about from place to place in the opposition that you have testified to as to locality? (Objection overruled.) A. I found a great deal of opposition in the Peoria and also in the Springfield district; in fact, I didn't
1097 meet with very much success in either of them; I met with more success outside of those districts than I did in them.

Q. This mine you speak of at Marysville, what mine was that technically known as? A. Donk's Mine No. 2.

Q. Did you have any experience in connection with the use of Buckeye Powder in any other mine belonging to the Donk Coal Company? A. Well, we attempted to get the powder in at Troy, but we met with some opposition there just about the same
1098 that we did at Maryville and we had a pretty good business at No. 1 and I didn't want to get into any fight in those two places and I simply backed out and held on to the No. 1 business.

Q. Did you ever visit Pana, Illinois?

Q. That is in your district? A. While I was working for them, I went all over the State, yes, sir; I was there.

Q. What coal companies at that point did you call upon? A. I called on Mr. Puterbaugh.

Q. What other mine at that point did you call upon or mine owner? A. Pennwells.

Q. Any others? A. That is all I remember.

Q. What experience did you have at each point with either of the owners of those mines? (Objection overruled). A. I was not able to do any business; they told me that they had contracts—

1099

Mr. Penwell did—that he couldn't do any business. The other fellow dickered with me and found out what price I could make him. He was willing to find out the price and I thought he was feeling me out, and I didn't bother with them; he said he couldn't do any business with me now, and I left.

Mr. Katzenbach: I move to strike out as giving a statement made to the witness by other parties and is therefore hearsay testimony, and also upon the grounds that it is incompetent, irrelevant and immaterial.

1100

The Court (after examination of the deposition): It must be struck out.

The plaintiff then and there excepted to said ruling and said exception was allowed.

Q. Now, was there any trial of Buckeye Powder made at any time at that point? A. Not right there, there wasn't; there was at Pekin.

1101

Q. What was that? Tell what you know about the trial of the Buckeye Powder at the Pekin mines? Just tell what you know, of your own knowledge, with reference to the trial to which you have just been interrogated. A. The Dugan Brothers, I think, were running that mine at that time and they said if the mines would take the powder they could do some business with us; so I took the matter up with the miners and took some powder there for them to try; went down the mine after they shot it and saw that it done nice work; everybody was satisfied with it, and they also reported that to the Local Union, and they agreed to use the powder, provided the company would buy it; the company had given assurance that if it was acceptable to the men, they would. After the men

had taken that action, there was somebody went down there and went around with the committee of the miners around the mine, and they had them sign up to continue the use of the powder they were using before.

Mr. Katzenbach: Is that what was told you?

A. That was the excuse they offered me.

1103 Q. Do you know who the man was that went around to the miners at that time? A. No, sir; I don't know who it was.

Q. Do you know who he was puurported to be? (Objection sustained.)

Q. Now, from time to time, as you were carrying on your work for the Buckeye Powder Company, did you make repots to the Buckeye Powder Company of your efforts? A. Yes, sir.

Q. Did you at any time visit the mines of the Mammouth Vein Coal Company? A. That is in Iowa, isn't it?

1104 Q. Do you know where the Mammouth Vein Coal Company is located? A. I think it is in Iowa.

Q. Do you know who the Manager of that mine is, or was at that time? A. I know him, but I can't recall his right name.

Q. Did you sell any powder to him? A. No, sir.

Q. Was there any reason given to you why the Buckeye Powder could not be purchased by the Manager of the Mammouth Vein Coal Company? (Objection sustained.)

Q. Do you know a coal company known as the Phillips Fuel Company? A. That is at Ottumwa.

Q. Did you make any effort to sell Buckeye Powder to the Phillips Fuel Company? (Objection overruled.) A. Yes; I called on Mr. Phillips,

but I wasn't able to do any business with him at that time.

Q. Do you know a coal company called the Rex Fuel Co.? A. The Rex Fuel Company, yes; I remember the name, but right now I don't know just where it is located.

Q. I show you a paper which purports to be a letter dated 'Bussey, Iowa, December 15, 1904,' and I ask you to examine the same and state whether or not you recognized the handwriting? A. Yes, I remember it. 1106

Q. Whose handwriting is that? A. That is mine.

Q. Now, I will ask you to state, since reading the letter which I just handed to you and which I will have marked for identification whether the same refreshes your memory as to the Rex Fuel Co.? A. That was the Durfee mine.

Q. Did you succeed in selling powder to the Durfee mine? A. No, sir.

Q. What reasons, if any, can you state why you were not able to sell Buckeye Powder to the Rex Fuel Company, known as the Durfee mine? (Objection sustained.) 1107

Q. How does the Local Union speak; in what form is it authorized to express the action of the Union? A. Well, that would be——

Q. Suppose the action of the Union was taken in writing—how would that be evidenced? A. By the signature of the secretary and also the seal of the local union.

Q. Can the seal of the Local Union be used on any document not official? A. I don't think it would be; it should not be.

Mr. Katzenbach: There is no cross examination of this witness.

1108 *William Coyne—Direct*

WILLIAM COYNE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Coyne, where do you reside? A. Wilmington, Delaware.

Q. What is your occupation? A. Director of sales in the du Pont Powder Company.

Q. How long have you held that position? A.
1109 Since August, 1907.

Q .What was your position prior to that date? A. For about three years, traffic manager.

Q. Of the same company? A. Of the same company.

Q. And prior to that, as far back as 1903? A. Since the beginning of 1904—my connection with the company commenced in the early part of 1904—in January, I think.

Q. What position did you hold at that time? A. Traffic manager.

1110 Q. Now, what position—the position that you hold at the present time, will you describe briefly what the offices are that are under your control? A. Practically entire charge of the marketing of all the production of the du Pont Powder Company with the exception of Government powder.

Q. Do you have anything to do with the matter of prices, regulating the prices? A. Yes, sir.

Q. You were to produce a document to-day relative to certain prices, Mr. Coyne, I believe? A. Yes, sir.

Q. Have you that with you? A. I have.

(Said document marked P 1219 for identification.)

Q. Mr. Coyne is it any part of your duties to

make the purchases or keep track of the places where the powder which you sell to the various customers comes from? A. I don't quite understand that. Do you mean, do I know what our source of supply is?

Q. Yes; I will ask you that first? A. Yes, sir.

Q. Now take an illustration—so as to make myself clear—suppose that you wanted to supply a customer upon an order received from the State of Illinois—we will say from Missouri, St. Louis—
with an order for black blasting powder, from 1112
what source would you have that order filled, just as an illustration—preliminary? A. For delivery at St. Louis?

Q. Yes. A. Well now we would ship it from Mooar, Iowa, but——

Q. Say during 1903 to 1908? A. Place it in the Belleville mill.

Q. Have you had any experience, or has it been any part of your duties during the time that you have been acting for the du Pont Company, to keep track of the sources from which the powder was 1113
shipped to various customers that were under contract with you during that period? A. Well I always knew the sources from which we drew the supply, I have records of it.

Q. Can you say who supplied the powder—from what mills, generally speaking the powder came that was used to supply customers of the E. I. du Pont de Nemours Powder Company at any time since its organization down to 1908? A. I don't quite understand, the year—what do you mean by the year of your organization?

Q. Your organization was 1903, was it not? A. Why, there were several companies; I don't know.

Q. I am speaking of the Powder Company now. A. I would have knowledge of the sources of supply from 1904 on.

1114 *William Coyne—Direct*

Q. I show you plaintiff's identification 916, and ask you to look at it and state if you know where the powder would come from to fill any orders that might be made under the terms of that contract? A. The consumption is at Peoria, Illinois?

Q. Yes. A. I should say that would come from Mooar, Iowa.

Q. Will you state whether or not the Powder Company—the E. I. du Pont de Nemours Powder Company—had anything to do with supplying the
1115 powder that was called for under the terms of that contract? (Exhibit 916 shown to witness.) A. This antedates my connection with the company, but I don't think there is any doubt but what they did.

Q. Do you know where the powder was manufactured that was used at any time or ordered at any time for the purpose of filling orders that were received under any of these contracts? A. From 1904 I do.

Q. From that time on tell us what you know
1116 about them. A. Well, from our various plants, blasting powder mills of which I think you have a list or I can recite from memory a good many of them.

Q. I don't ask you to do that, but you say "our"; by "our" what do you mean? A. Well, I mean the du Pont Company as I know it.

Q. What do you understand that to be?

Mr. Katzenbach: I object.

The Court: Mention them, can you?

A. The mills?

The Court: Yes.

A. Yes; I can mention the mills, if that will

be sufficient; Mooar, Iowa; Belleville, Illinois; Pittsburg, Kansas; "P. & K." it might read there.

A. Pittsburg, Kansas; Turk, Kansas; Kellogg, West Virginia; Fairchance, Pennsylvania; Frontenac, Indiana; Youngstown, Ohio; Wilmington, Delaware; Birmingham, Alabama; Chattanooga, Tennessee; Pleasant Prairie, Wisconsin; Santa Cruz, California; several mills in the anthracite district of Pennsylvania; Punxatawny, Pennsylvania; and there may be some small mills that I don't recollect. 1118

Q. You had charge of the filling of orders that were received under those contracts at that time, did you? A. Well, yes; I might say that we had an order bureau that worked under my direction.

Q. In whose employ were you, what company were you acting for? A. Well, whatever company existed since 1904; I don't know the changes in the name or the dates that took place .

Q. Did you at any time change your office from one place to another in order to accommodate yourself to any particular company, any change in company? A. No, sir. 1119

Q. Always been in the same office? A. Not always the same office, but we moved our office to get better quarters only.

Q. From what source would your salary come, what company would you receive that from? A. I have to answer that the same as the other; it was whatever company that was operating.

Q. Did it come in the form of cash? A. Oh, no; I always got but one check.

Q. You mean since you have been working for the company, one check? A. I thought you asked me——

Q. Did it come in the form of checks, your pay? A. Yes.

1120

Q. Can you recall what name was on those checks when you received the checks? A. These are checks in payment?

Q. Yes. A. I can; the recent checks.

Q. No; I am not asking for the recent ones; I would like to have you tell me as early as your employment began. A. I don't recollect.

Q. Do you remember who signed them as Treasurer? A. I don't remember that the treasurer does sign our checks; I think they are signed——

1121

Q. Well, do you know whose name was on them as Treasurer then? A. My recollection is that of P. S. du Pont.

Q. Now when you filled an order under any of these contracts what did you do with the documents or the records of that order; where were they placed by you? A. For a certain period, probably two or three years, they were kept in the main office at Wilmington and then sent to the hall of records.

Q. Do you recall the form in which those orders

1122

were prepared, in reference to the particular company to which you assigned the order or the papers? A. Since my connection with the company there never was but one company that the orders were assigned to.

Q. What company was that? A. That was the operating company.

Q. Give the name will you? A. I don't recall what the name of the company was in 1904. It was either the E. I. du Pont & Company or the E. I. du Pont de Nemours Powder Company or the name has been changed two or three times and I have never had occasion to pay much attention to that.

Q. As far as you know you have always worked for one company? A. Yes.

Q. And of that company Mr. T. S. du Pont has always been treasurer and Mr. T. C. du Pont has always been President? A. Yes.

Q. And Mr. Alexis I. du Pont has always been Secretary? A. Yes.

Q. Have you at any time ever given orders for powder to be shipped from the United States Powder Company's plant? A. No.

Q. Have you ever given orders for powder to be shipped from the Egyptian Powder Company's plant? A. No. 1124

Q. From the Excelsior Powder Company? A. I think we may have in cases, emergency, bought occasionally a car load of powder from the Excelsior Powder Co., Burton Powder Company? A. Yes; in time of stress we have.

Q. From the Senior Powder Company? A. Yes, sir.

Q. From the Equitable Powder Company? A. We may have bought an occasional car when we had blows.

Q. From the Western Powder Manufacturing Company? A. Yes. 1125

Q. Now, in regard to the last company whose name I have just given you, will you state when you began ordering shipments from the Western Powder Company's plant? A. I think it was the latter part of 1909.

Q. How long have you continued to ship orders from that plant? A. I think we are taking some powder from that plant yet.

Q. Now, did you at any time Mr. Coyne ever endeavor to buy Buckeye Powder, give orders for Buckeye Powder through your plant? (Objected to and objection overruled.) A. From the Buckeye Powder Company?

Q. Yes. A. No, sir.

1126 Q. Did you ever attempt at any time to make an arrangement with the Buckeye Powder Company for the purchase of any portion of the output for disposition to your customers? (Objected to and objection overruled.) A. The Buckeye people were so antagonistic to us that we never felt that we could have any dealings with them at all, and didn't.

Q. You never sought to make any arrangement of that kind for that purpose? A. No.

1127 Q. Do you remember ever having written a letter to Mr. Waddell or to the Buckeye Powder Company for the purpose of seeking an alliance with them, or an arrangement with them to make use of their powder with your customers?

Q. I show you a paper and ask you to state whether you know anything about that signature (handing paper to witness)? A. That is my signature.

(The paper referred to was marked Exhibit 1221 for identification.)

1128

Q. Now, I ask you to look at this document and read it, and state whether or not you desire to make any change in the testimony which you gave the other day, with reference to some interrogatories which were put to you? A. Yes, sir; you asked me if I had any recollection of writing a letter to Mr. Waddell asking him for prices of powder and I said I had no recollection. This letter refreshes my memory; this is my letter.

Q. And then you wish to change your testimony in that regard? A. Yes, sir.

(The paper was received in evidence and marked Exhibit 1221 and read to the jury as follows:)

E. I. du Pont de Nemours Powder Co.
Wilmington, Welaware, October 24, 1907.

Mr. R. S. Waddell, Pres.,
Buckeye Powder Company,
Peoria, Illinois. File SD-241-D

Dear Sir:

Would it be possible for you to help us out with some "B" Blasting Powder and if so, at what price 1130
f.o.b. mill?

Would also like to know what size grains you could furnish, what quantity per month, and the number of months you could continue to supply us.

Thanking you in advance for your early attention.

Q. Have you any knowledge, Mr. Coyne, of any purchases which have been made at any time during your incumbency of the position of Director of Sales, of powder—blasting powder, from the Western Powder Manufacturing Company? A. Yes, 1131
sir.

Q. Do you have any knowledge of your own, or any information concerning how that powder was shipped from the Western Powder Manufacturing Company to your customers, that is to say, in what kind of kegs? A. I never saw the kegs, but I know the kind of kegs we directed the powder to be shipped in.

Q. And what kind of kegs were they? A. Du Pont kegs.

Q. Now, I will ask you to state whether in ordering shipments from other manufacturing companies of which you have made purchases, other than your own plants, did you or did you not have that

powder shipped in du Pont kegs? A. Sometimes we did, sometimes we did not; it depended upon the volume of the business and the length of time we had before we needed the powder for the customer.

Q. Have you any knowledge of the total number of kegs which were shipped by you from the Western Powder Manufacturing Company's plant, to your various customers during any years since 1908 to the present time? (Objection overruled.) A. I can remember one or two years.

1133 Q. What years were they? A. I think 1900—we did not ship any in 1908, as I recall it. In 1909 we purchased about 20,000 kegs.

Q. Do you recall about how many kegs you purchased in 1910? A. I think about 40,000 or 43,000, somewhere in there.

Q. And 1911? A. I think it was something less than in 1910, but around 30,000, if my memory serves me.

Q. 1912? A. I do not think I can remember that.

1134 Q. 1913? A. I do not recall just the number of kegs in 1913.

Q. Now, can you recall the price that you paid to the Western Powder Manufacturing Company for the powder which you purchased during the years from September 18, 1908, down to the present time, the price per keg? A. The price varied. I think we paid for some at the time 90 cents at the mill, and some at the time 95 cents.

Q. Do you know when you began paying 95 cents? A. I cannot say.

Q. Do you recall whether you paid the 90-cent price as late as 1912? A. No, I cannot say.

Q. Now, was or was not this price of 95 cents a price at the mills, or was it at the customer's delivery point? A. It was at the mill.

Q. You assumed the burden of expense in transporting it from the mills to the customer? A. Yes, sir.

Q. Now, referring to Plaintiff's Exhibit 1219 for identification, the same being a document which you have produced here. I note that the prices which are given upon that document appear to have been made on an average basis; is that correct? A. It is the yearly average delivered price, by district.

Q. How did you obtain the average, say during 1136
the years 1906 and 1907, for black blasting powder, which was sold in the Chicago district? A. Of course I did not make the statement, but I know the method.

Q. Well, will you describe that method? A. The price we received for the powder from the customers was divided by the number of kegs sold.

Q. You know the testimony given by Mr. Patterson, do you not, regarding prices which obtained in that period, the 95-cent rate? A. I heard Mr. Patterson's testimony.

1137

Q. Yes; now, the rate as given here appears to be 98 cents, and I will ask you how you have arrived at that determination, at 98 cents? A. Well, Mr. Patterson said that the 95-cent price had been made, but not of necessity to every customer.

Q. Well, now, can you state what proportion of the powder which you sold during that period in that district was sold at the 95-cent rate? A. What year are you referring to?

Q. During 1906 and 1907? A. No, I could not give you the amount.

Q. Can you state whether or not the majority of the powder was sold at the 95 cent rate? A. I cannot, except for the fact that the average price was 98 cents, as an indication that the major portion of it was sold at 95 cents.

1138 Q. Now, I will ask you also to state whether the 95 cent rate cut any figure in the average which you give for the year 1905, which appears to be $1.04? A. Yes.

Q. Then can you state when and what date your 95 cent rate began, when it was first made, that rate? A. May 5, 1905.

Q. The May 5, 1905? A. The 95 cent price was authorized.

1139 Q. Now, can you state when it was that the 95 cent rate was discontinued? A. Except in the case of existing contracts which of course had to be carried out, that price was discontinued, October 14, 1907.

Q. Now did that 95 cent rate prevail in any district except the Chicago district during that period? A. During what period?

Q. During 1905, 1906 and 1907? A. There was one 95 cent price made in the Pittsburg district according to the record, in I think October, 1905, and in March, 1906; in the Pittsburg district a 95

1140 cent rate generally prevailed.

Q. That was in 1900—what year did you say? A. 1906, after March.

Q. Yes; was there any competition at that time in the Pittsburg district? A. Yes, sir.

Q. I beg your pardon? A. Yes, sir.

Q. What company was it that you were in competition with at that time? A. Quite a number.

Q. Will you mention some? A. The Burton I think. Standard. Miami; Rand Powder Company —oh, yes, the Senior and King Powder Companies. The Rand Powder Company of New York.

By Mr. Katzenbach:

Q. What was that last? A. The Rand Powder Company of New York.

By Mr. Abbott:

Q. That rate then, as I understand it, was made to meet the competition in the district? A. Yes, sir.

Q. You issued a regular price list during the year 1907, your first regular price list, did you not? A. I think that was a first price list that was issued for general distribution.

Q. Now, after that price list was issued, did you at any time make any deviations from the prices 1142
set forth in that list? A. Well, very few, if any. There were a few situations that were a little bad that had to be taken care of; for example, some of our agents had made contracts at the low figures that had prevailed, and extended some time after October 14th, and we had to protect them, but as a general rule the price stayed up until pretty well for a couple of years.

Q. Did you have any competition after the first price list was issued in 1907? A. Yes.

Q. Did you at any time make any deviation in 1143
prices with a view of meeting competition during that period after 1907? A. You mean for what period after?

Q. After you issued your regular price lists? A. Well, I cannot recall any specific cases, but I am quite certain that we had afterwards, had to meet conditions.

Q. Now, when you made a deviation from the price lists, these regular price lists, for the purpose of meeting competition, did you make that price effective for your entire trade? A. When every situation got bad in any particular locality, and several prices were reduced, and that would always be the case before we would reduce ours, we would take care of every one in that territory at about the same basis.

1144 *William Coyne—Direct*

Q. What I meant was this—— A. That is generally speaking.

Q. Not so much in the particular district, but did you make a general arrangement of your prices that were mentioned in this price list, and set forth in this price list when you made these deviations for the purpose of meeting competition? A. I cannot recall any.

Q. Now, do you know what proportion of the blasting powder trade with your companies in the
1145 Central States was under contract during the years 1904 to 1908, and what proportion was not under contract?

Mr. Katzenbach: That is rather indefinite as to the Central States; I think it ought to be so framed as at least to include certain specific states.

The Court: Yes.

Q. Well, you have Chicago, St. Louis and Pittsburg districts. Would those districts be commonly understood as Central States or would they not?
1146 A. It depends on the period, you have in mind during that period—the Cincinnati district and the Kansas City district was included.

Q. They would be included? A. Yes.

Q. Can you state what proportion of your black blasting powder trade in the districts in St. Louis, Pittsburg and Kansas City, was under contract during the years 1904 to 1908? A. No.

Q. Can you state what portion was not under contract; I am not asking you now for definite figures, but approximately. A. No; I never remember making that calculation or seeing the figures.

Q. Did you have anything to do with making sales of, or handling the output of smokeless powder plants? A. The commercial part of it, yes.

Q. By commercial part, what do I understand? A. As against the government part.

Q. You had nothing to do with making sales to the Government? A. No.

Q. Did you have anything to do with making sales to customers other than the United States? A. Yes, sir.

Q .Now, from what plants did you obtain this smokeless powder which you sold to your customers? A. Carney's Point, N. J., Haskell, N. J.

Q. Is that all? A. And I think we had a small 1148
plant at Oakland, N. J., during the period mentioned; also Parlin, N. J.

Q. Are there any other or were there any other smokeless powder manufacturing plants in the United States during that period? A. Yes, sir.

Q. Where were they located? A. The American Powder Mills near Boston, Mass.

Q. Is that all? A. I think that is—I cannot recall any others.

Q. Now, what proportion of the smokeless powder was manufactured by these plants which you referred to, and the American Powder Mills? A. 1149
As near as we could figure it, we have no exact data on it, somewhere between 65—our percentage of the trade was between 65 and 75 per cent, somewhere in that neighborhood.

Q. Of all grades and kinds of smokeless powder? A. Commercial smokeless powder, yes.

Q. Now, while you were acting as general sales agent did you have anything to do with handling dynamite? A. Yes, sir.

Q. From what company—what company did you represent while you were handling dynamite? (Objection overruled.)

A. I know nothing of the Eastern Dynamite Company.

Q. You say you handled dynamite and sold dynamite; from what plants did you obtain the dynamite that you sold to your customers? A. I sold dynamite, commencing in I think July, 1907, and from that time on we drew our stock of dynamite from the various dynamite plants of the company, du Pont, N. J., Kenfield, N. J., Forcite, N. J., and Emporium, Pa., Hercules, Cal., Luvers, Colo., Barkdale, Wis., Ashbourne, Mo. I think that is all.

Q. Now, when you received an order or an ap-
1151 plication to purchase black blasting powder or dynamite or smokeless, or any other explosive which was in your department, and you desired to have a special price to meet any of the conditions which you thought was proper, did you proceed to obtain that price, did you make it yourself? A. Practically always.

Q. Did you at any time have any communication with any other department or any board in connection with the operations of your company? A. Not since I went into the sales department. We had a sales board of which I acted as chairman,
1152 and still act as chairman, but the price matters were settled with the individual assistant directors of sales, and they were ratified by the sales board at the meetings of the sales board.

Q. Now, this sales board that you speak of, do you know when that originated? A. I have knowledge of its existence since early in 1905, when a member of it, in my capacity as traffic manager.

Q. Will you state how that sales board was made up? A. By employees of the sales department. The vice-president in charge of the sales department was the chairman, when he was present. In his absence the director of sales was chairman. The other members of the board were the subordinate officials of the sales organization.

Q. Just what, in a general way, were the duties of that board? A. Simply passing upon the sales matters of the company.

Q. Did it have any other special duty except the making of prices? A. Well, except in a general way it supervised all the delivery of powder, and plants of the customers.

Q. And of course you know Mr. J. A. Haskell? A. Yes, sir.

Q. Was he at any time connected with this sales board? A. He was chairman of it, to my knowledge, from early in 1905, to some time in July, 1907. 1154

Q. In that connection, I do not think I asked you the other day where you were employed before you entered the sales department of the du Pont Company. A. In the Lake Superior Consolidated.

Q. At what point? A. Saulte Ste Marie, Ontario.

Q. Now, during the time that you were acting as director of sales, from 1904 to 1908, did you have anything to do with the Laflin & Rand Powder Company? A. I was not director of sales from 1904. My directorship of sales commenced in July, 1907. 1155

Q. I beg your pardon, previous to that time what was your title? A. Traffic manager.

Q. Well, during the time that you acted for the du Pont interests in connection with the sale and marketing of its explosives, did you have anything to do with the Laflin & Rand Powder Company? A. I think not.

Q. Did you have anything to do—— A. I think the Laflin & Rand Company was out of existence from the time I came with the company, and I do not know how long before.

Q. Did you have anything to do with the Hazard Powder Company? A. No, sir.

1156 Q. Did you have anything to do with the Chattanooga Powder Company? A. I think not. I think they were all out of commission.

Q. Did you have anything to do with the Indiana Powder Company? A. No.

Q. The Phoenix? A. No.

Q. You have no knowledge of how the product of any of these companies was marketed? A. No.

Q. Did you have anything to do with the shipment of any powder, or directing the shipment of
1157 any powder, or other explosives, from any mills belonging to any of these other companies, the names I have given to you—the Hazard, the Laflin & Rand, and Chattanooga and various other companies? A. No.

Q. In your department would that be—give the two orders for the shipment? A. In my department?

Q. It would be in your department? A. Yes, sir.

Q. Then, since you have had the title of director of sales, you have made your shipments from such
1158 plants as are owned by the du Pont Powder Company? A. Yes, sir; and since I have been traffic manager, too, as far as my knowledge goes.

Q. Oh, yes, and from the time you entered the employ of the du Pont Company down to the present time? A. Yes, sir.

Q. You have shipped only from plants known as plants belonging to the E. I. du Pont Powder Company? A. Yes, sir; that is true, with the exception of some powder which we bought in time of accident, from other powder companies.

Q. From these other mills which you have indicated? A. Yes.

Q. I show you plaintiff's papers for identification, 1125, 1125-A, 1126 and 1127, and ask you to state whether you know anything about those docu-

ments (handing same to witness)? A. Yes, sir. They were prepared in my department for Mr. Patterson.

Q. Now, referring to identification No. 1125-A, I call your attention to the fact that on this list of competitors—on the list which shows the number of pounds of output from all competitive dynamite companies, from 1903 to 1908, inclusive—and I will ask you to state how you obtained the information as to the output of those plants, as indicated upon this document? A. In various 1160
ways. The principal way is that our salesmen call upon practically every consumer of—Is that a dynamite statement?

Q. Yes. A. (Continuing): Every consumer of dynamite in the United States. We have at one time or another sold to nearly every consumer, and they make a trade report showing as near as they can estimate the annual consumption of explosives of every person they call upon, and the name of the company from whom he is purchasing as near as they can get the information from the customer, and 1161
at Wilmington those reports are sorted by companies and the annual consumption of the various customers added up; and in that way we get—that is our principal source of information. Now, we know that we cannot get it all that way, and we add 15 per cent. to the totals so arrived at. Then we have various other ways of checking that information. Sometimes a competitor will tell us what he is getting, and we get pretty close to it, because in the Government suit, I think, for the years 1906, 1907 and 1908, or 1905, '06 and '07, that table was offered in evidence by us, and the Government checked it out by asking each competitor to submit a sworn statement of his business, in those years, and we were within seven or eight per cent. ac-

curate, not of each powder company, each competitor, but as a whole I think we are within 8 per cent., as I recall it, of accuracy.

Q. The calculations which you have made here as to the capacity and the output of these mills, has not been made from any personal knowledge, or personal investigation of your own concerning those plants? A. Only in the manner stated.

Q. You have never calculated from the size or number of wheels which were used, what the capa-
1163 city would be? A. That is a part of the general scheme with our men who work on that problem, and which they take into consideration.

Q. Did you have any personal knowledge other than these reports, which had been made to you by your representatives? A. By the men in my department, yes, sir.

Q. Now, referring to Plaintiff's Exhibit 1126 for identification, which purports to be a statement concerning black blasting powder, or black powder, I take it that is black blasting powder? A. Black
1164 blasting powder. "B" blasting, is the common designation.

Q. I note on the second sheet of the table, which purports to show the capacity and number of kegs of output for all competing blasting companies for 1903 to 1908, inclusive; now, how did you obtain the information upon which you based that table? A. Practically in the same way as I explained the dynamite information, in fact, almost exactly.

Q. I call your attention to the fact that there is a statement here concerning the Buckeye Powder Company, during the years 1903-4-5-6-7 and 8. How did you obtain information concerning the output of that mill? A. In the manner explained.

Q. Now, do you know of any investigation that was made by any of your representatives concern-

ing the wheels and the size of the mills, and the number of kegs that were manufactured during those years for this company? A. I do not think so. I cannot recall that any of the men ever made any such investigation.

Q. I will ask you in a general way, and you can stop me, if I get the name of a company that the same rule does not apply to. I will ask you concerning the Burton Powder Company, the King Powder Company, the Jefferson Powder Company, the Giant Powder Company, the Lakeside Powder 1166
Company, the Miami Powder Company, the B. C. Rand Powder Company, the Rand Powder Company of Pennsylvania, the Rand Powder Company of Tennessee, and the Rockdale Powder Company, the Tennessee, the Tomhicken Powder Company, the United States Powder Company, and the Western Powder Manufacturing Company. Now, you recall those names, as I have read them to you, and I will ask you to state whether you obtained the information regarding any of those companies, in any other manner than you have indicated? A. I 1167
think not, Mr. Abbott.

Q. You have no personal knowledge in any way as to anything contained in this statement, except in such as has been furnished to you by your representatives who have sent in information in these trade reports? A. Yes, sir.

Cross examination by Mr. Katzenbach:

Q. Mr. Coyne, you were shown a letter written by you under date of October 24, 1907. Do you recall the letter to which I have reference? A. Yes, sir.

Q. Did you ever receive a reply to that letter? A. I have no recollection of receiving a reply to it,

no more than I had of sending the letter, and I would like to explain, if I might, why I had no recollection of that letter.

Q. Make an explanation of why you had no recollection of the letter until it was shown to you? A. We had the most serious explosion in our history on the 14th day of October.

Q. Of what year? A. 1907, and we lost an entire plant; something that did not happen to us before. And a great deal of powder that was stored
1169 there for the fall trade went up in the explosion, and we were similarly, I think, panic stricken with the idea that we would not be able to take care of the big volume of business we thought was offering, and we probably wrote broadcast to every powder company in the country for help, and I think that this letter—probably I did ask somebody to write that letter, and I probably signed it in a hurry, and it never fastened itself on my mind.

Q. Was the plant you have located in Fontenac, Ind.? A. I think in Indiana.

1170 Q. And what was the daily output of the plant before it was destroyed by this explosion of October 14, 1907? A. As I recall it, it was at that time 1,500 kegs per day.

Q. How many kegs of powder were destroyed by that explosion? A. 43,000.

Q. Now, will you state when the first purchase of any powder by the du Pont Powder Company was made from the Western Powder Company? A. Either in October or November, 1909.

Q. Now, who was in control of the Western Powder Manufacturing Company at that time? A. Messrs. Olin & Lent, I think.

Q. Were they experienced manufacturers of powder? A. The oldest in the country except ourselves—except du Pont.

Q. How long had Mr. Olin, to your knowledge, been engaged in the powder business, as a manufacturer? A. Well, to my personal knowledge, since 1904, but I had known that he had built several mills and operated them several years before that.

Q. And Mr. Lent, how long had he been engaged in the powder business? A. Of my own knowledge since 1904—but by general repute, he had been in the business all his life, practically.

Q. During this period that you have spoken of, commencing with the year 1909, and during the years following, were there any other bad explosions in the du Pont mills, which necessitated your purchasing powder of other people? A. Yes, sir. On January 9, 1908, we had an explosion at Belleville, Ill., mill, and were closed down by an injunction, until September, 1909, or about 21 months. 1172

Q. And during that period was there an explosion at Mooar, Iowa? A. I do not recall any explosion at Mooar, Iowa, but my impression is that we had a fire there, but we had in 1908 two explosions at Pleasant Prairie, and I think three fires——

Q. Where is the Pleasant Prairie mill located, at what distance from Chicago? A. Eighty-five miles north of Chicago. 1173

Q. And known as the Chicago District? A. That is in the Chicago District.

Q. With the crippling of these mills at Belleville and at Fontenac, Ind., and Pleasant Prairie, Wis., that left you with what source of supply for the Chicago District solely and the St. Louis District? A. We simply—Mooar, Iowa, and Pleasant Prairie and Fontenac and Belleville were out of commission. We had but one mill where we previously had four.

Q. At the last explosion at Pleasant Prairie, how many kegs if any were exploded? A. Early in

1911, Pleasant Prairie was totally destroyed by an explosion, entirely wiped out, and we lost 85,000 kegs of powder there.

Q. Had the du Pont Company to your knowledge, prior to the purchase of powder from the Western Manufacturing Company, in the year 1909, ever purchased powder in times of stress, when explosions had occurred, from other powder companies? A. Yes, sir.

1175 Q. And that is the prevailing custom or practice, is it not? A. Oh, yes, sir; we purchase mostly from one another in time of trouble.

Q. Yes. Where the du Pont Company has knowledge of the ability and experience, and of the character of powder made by a competitor, has it been the custom in supplying orders, that that powder, known as standard powder, should be put into the kegs of the du Pont Company and shipped to customers? A. Why yes, when there was time enough for du Pont to send its kegs, or provide the other kegs.

1176 Q. Is there anything unusual in that? A. No, it is quite the custom.

Q. Is that done by the other manufacturers, when their mills explode; do you in your factory at times send away powder, and do other manufacturers of powder at their factories send away powder done up in containers of other companies, to your knowledge? A. If there was time and the other—yes, I am quite certain we have done that. We have put our powder in other companies' kegs.

Q. Now, Mr. Coyne, you were requested to make out a statement showing the average yearly gross price obtained for "A" blasting and "B" blasting for years shown in different districts. You have complied with the request of Mr. Abbott, have you not? A. Yes, sir.

Q. And that was the statement which has been marked here as Exhibit 1219, is it not? A. Yes, sir. I do not see that number—yes. (Paper handed to witness.)

Q. Now, Mr. Coyne, I will ask you to hold in your hand this Exhibit 1219, and will you state, if you please, what was the average price of "B" blasting powder—I will change this—"B" blasting is known as the standard powder, is it not, and the quality manufactured by the Buckeye Powder Company? A. "B" blasting, yes; that is the name of the common designation.

Q. That is the common blasting powder? A. Yes, sir.

Q. Now, will you state in the first place, under the designation of "Chicago District," what comprises the Chicago district, in making out this estimate? A. I think during the period '3 to '8 inclusive, the limits of the Chicago district changed, but in a general way. The Chicago district was Indiana, Illinois, Iowa, Northern Missouri, Wisconsin, Minnesota, North and South Dakota and Michigan.

Q. Down to the year 1906, what was the average price of "B" blasting in the Chicago district? A. The statement shows that the average delivery price was 98 cents per keg.

Q. That was the average price? A. That was the average price from our records.

Q. Now, were there other districts in the United States in which the price of "B" blasting was as low, or lower than in the Chicago district, and if so, in what districts was that so? A. In 1906?

Q. In 1906? A. Hazleton district, the price was 95 cents delivered, but it might be well to explain there that that——

Q. What was it in the Pittsburg district?

Mr. Abbott: I would like to hear the witness's explanation of that.

Mr. Katzenbach: Do you want to make any explanation?

Mr. Abbott: The witness said he would like to explain.

Mr. Katzenbach: Certainly; make any explanation you desire to make.

The Witness: That 95 cent price for the
1181 same class of powder in the Hazleton District, the price would have been 98 cents, but the price was 95 cents for "B" blasting, because it is what we call soft grain powder, it costs about 5 cents less to manufacture than the standard "B" blasting grade.

By Mr. Katzenbach:

Q. Now, do you use the standard "B" blasting grade in the Pittsburg district? A. Yes, sir.

Q. Now, what was the average price of the stand-
1182 ard "B" blasting in the Pittsburg district for the year 1906? A. 98 cents.

Q. Then that was the same as it was in the Chicago district? A. Yes, sir.

Q. Now, what does the Pittsburg district comprise, what territory? A. The Pittsburg district changed some in that time, but in general the Pittsburg district was the states of Ohio, Western Pennsylvania, Western Maryland, quite a section of West Virginia. I am not certain whether this took in the part of Eastern Kentucky or not, but I think that leaving out Kentucky, it is the district.

Q. In the Pittsburg district, did you have very active competition during the year 1906, to your knowledge? A. Yes, sir.

Q. What competitors did you meet in the Pittsburg district in the year 1906? A. The standard. The Burton. The Miami. The King. The Austin. The Senior. The American. The Rand of Fairchance and the Rand of New York. There were three or four competitors in the Hazleton District who got over in there with their powder, the Black Diamond, the Nuremburg, the Roberts, and two other small ones, that I cannot recall.

Q. The Lofty? A. The Lofty was one of them, and the Miller Powder Company. 1184

Q. Now, do you know whether the Rand Fairchance and Pennsylvania was a competitor in the year 1906, or whether or not this mill blew up in the latter part of 1905? A. I cannot give the exact date, but I know the plant was totally destroyed by an explosion, somewhere along that period.

Q. Now, in the Chicago district, during the year 1906, was there competition in the powder trade during that year? A. Yes, sir.

Q. What competitors did you come in contact with in the Chicago district? A. Do you mean competitors that were competing in 1906? 1185

Q. In 1906, in the Chicago district. A. You do not mean the powder companies that were actually in the Chicago district, you mean in the districts that were adjacent thereto.

Q. That were in competition in the Chicago district. A. That actually sold powder in there, in competition with us?

Q. Yes. A. There was the Senior, the King, the Miami, the American, the Austin, the Equitable, the Standard, the Burton, the United States, the Excelsior, Egyptian, and the Rand of Tennessee that got up into that territory.

Q. Well, you have omitted the Buckeye; they were in competition with you, were they not? A.

Well, yes, sir; they were in competition.

Q. Now, then, in the year 1907, you have stated here that in the Chicago District, the average price of "B" blasting was 98 cents a keg; now, will you state whether there were any other districts in the United States where the "B" blasting was lower per keg in the year 1907 than it was in the Chicago district? A. Pittsburg district was 97 cents that year, in 1907.

Q. Now, in the latter part of the year 1907, was
1187 there any increase in the costs of the ingredients which went into the powder, to your knowledge? A. As I recall it, our cost of soda, which is the principal ingredient, went up steadily from 1902 to 1907.

Q. And what was the date upon which the price of that blasting powder was increased in the year 1907? A. October 14th.

Q. At that time you were meeting what competitors in the Chicago district, those that you have named. A. All I have just enumerated, including
1188 the Buckeye.

Q. What is that? A. Including the Buckeye.

Q. Now, Mr. Coyne, I note here that in the years 1906 and 1907, that "B" blasting powder was higher than the prices which were mentioned in the Marquette district; will you state what was the amount of that and what is known as the Marquette district? A. That is a retail proposition. We delivered the powder in the Marquette district to the mines with our own teams in small lots as against—all the business in the Marquette district is of that character, while in the other territories, the carload units represent almost 95 per cent of the business, if not quite 95.

Q. Now, what is the Marquette district? A. It is the mining district around Marquette, Michigan.

Q. Do you then have to haul your powder from a plant to magazines at first in the country districts, where these plants are located, and then make a second call from those magazines to supply these small mines, by retail? A. We ship to our magazines, and they unload it into our magazines, and then haul it with teams to the mines.

Q. Now, I notice that in the New York district in the year 1906 that "B" blasting was $1.36 a keg, and in the Philadelphia district "B" blasting was $1.04 a keg. Will you state why that difference 1190
is in price, and also why more than in the Pittsburg and Hazleton and Chicago districts for the same year? A. The New York "B" blasting powder business is practically all a retail business. There is very little, if any, carload business in "B" blasting powder in that state, and where we do have that business, the municipal regulations, and the high freight rates, add very much to the cost of doing the business, and in addition there is a great deal of small export orders that are included in the New York sales of "B" blasting powder, which 1191
because of the restrictive regulations in New York, and the great cost of handling through that city, storing in barges in the stream, and hauling by launch out to vessels, just as they leave the Gravesend Bay, add very much to the cost.

Q. Is there any additional expense in that district by reason of any certain kind of packages required for export? A. Yes, it is a fact, the export "B" blasting powder has to be packed in, as I recall, cases, four or five, on account of South American customs regulations, which adds to the cost, in wooden cases.

Q. Now, why was the cost of "B" blasting in the years 1906 and 1907 in Philadelphia less than in New York? A. Because in Philadelphia the

bulk of the business was carload business, practically no less than carload "B" blasting trade in Philadelphia, there were some coal mines.

Q. Now I observe that in the district which you have marked here as the Huntington District, in 1906, that "B" blasting was $1.01 per keg as compared with 98 cents in the Pittsburgh District. What created that difference, freight rates or what, if you know? A. I imagine—well, I am quite certain that the average freight from the mills to the
1193 customer was greater than in the Pittsburgh or in the Chicago District.

Q. I observe that "B" blasting in the San Francisco District in the year 1906 was $1.18 per keg. State what the reasons were as to why that was higher than in the Pittsburgh District, for example, or in the Chicago District, during that same year, and first state where the San Francisco District is, what it comprises? A. The San Francisco District comprises the States of California, Arizona, Nevada, Utah, Idaho, Oregon, Washington,
1194 Alaska and the Hawaiian Islands. The higher price always obtains in that territory, because of the greater cost of manufacturing, labor and material.

Q. What else goes into the cost, the higher cost of manufacture, are wages higher in the mills in the San Francisco District? A. Yes, sir.

Q. How does the cost of the ingredients compare? A. As I recall it, there is a material difference in the cost of the ingredients, as well as labor, they are higher than elsewhere; and, in addition to that there were no new mills built in that territory in the time mentioned, and as a matter of fact the mills out there had about all they could do. I think we shipped from the East at that time around Cape Horn, in 1906 or 1907, or some in each year,

a total of 150,000 kegs of powder.

Q. The consumption, then, in that district exceeded the plant capacity? A. Yes, sir; at that time.

Q. I observe here, in the Scranton District for the year 1907, that the price was $1.13, whereas in the Hazelton District it was 94 cents per keg. Will you state why it was higher in the Scranton District than it was in the Hazelton District, if you know? A. A difference in the cost. In the Hazelton District, as explained, the kind of pow- 1196
der furnished was five cents less in cost per keg to make, it was a soft powder, five cents per keg less than the standard keg, whereas in the Scranton District a special packing of the standard grade was required, called sausage powder, which cost us, I think, at that time, 1903 to 1908, if I do not very much mistake, if my memory is not very much at fault, of the cost sheets, between 10 to 12 cents more a keg to make than standard powder.

Q. Now, Mr. Coyne, we are familiar with sausage down here in Trenton, but not with powder sausage. Just explain what this powder sausage is. 1197
A. Well, in coal mining, outside of the Scranton District, the practice of the miners is, I think, to make a paper tube to put their powder in for insertion into the bore hole. In the Scranton District we put the powder for them in a glazed—two glazed tubes, each twelve inches long, and 2½ inches in diameter. They are made of double thickness glazed leather skin, some kind of leather skin paper, which adds very much to the labor and material cost.

Q. And this making of sausages then, for the Scranton District is the cause for that higher price, is it? A. Yes, sir, for at least ten cents and possibly 12 cents of it.

Q. I notice that "B" blasting in the years 1906 and 1907 in Duluth District was higher than in the Pittsburgh or Chicago District or the St. Louis District. Will you state why that was. A. For the same reason as the high price in the Marquette District. We had a high freight rate to get the powder from our mills to the magazines in the first place, and then we team-hauled that powder in small quantities, 100 kegs or so, to the various mines, various distances.

1199 Q. Now, I observe that in the Denver District, the price in the year 1907 was $1.05, as compared with the price of 97 cents in the Pittsburgh District and 98 cents in the Chicago District. What is the cause of the difference in that price? A. I can only account for it by excess freight, higher freight than in the Chicago District.

Q. You have mills located in or near the Denver District? A. No, our nearest mill all during this period—yes, all during this period, was on the Missouri River.

1200 Q. At Pittsburgh, Kansas? A. Pittsburgh, Kansas, not on the Missouri River, but a Missouri River rate point.

Q. Would the haul be at least 1,000 miles, or approximately, to supply the Denver District? A. Approximately 1,000 miles, yes, sir.

Q. I notice that in the Birmingham District for the year 1907, the price was $1.04, as compared with 97 cents to the Pittsburgh District, and 98 cents in the Chicago District in that year. Will you state what was the cause of the higher price in the Birmingham District? A. I think first of all the labor, or at least the mill cost was higher, on account of high material freight, raw material freight, and all that trade in the Birmingham District at that time was practically retail trade, it was team delivery to the customers.

1201

Q. You have referred, Mr. Coyne, in your examination by Mr. Abbott, to a sales board, of which you acted as chairman. Will you state when you became a director of sales for the du Pont Company? A. I think July, 1907.

Q. Prior to that, I believe, you had been in the employ of the company, I believe you stated, as traffic manager? A. Yes, sir.

Q. And you had been a member of what you have referred to as the sales board prior to 1907, for what period of years? A. I think I went on the sales board early in 1905; it may have been late in 1904.

1202

Q. Now, when you went on the sales board, will you just state who were members of that board, and describe fully what you did? A. You want the names of the individuals?

Q. Yes; the personnel of the sales board. A. Eugene du Pont, assistant director of sales, in charge of the St. Louis, Chicago and Joplin offices; J. W. Matthews, assistant director of sales in charge of the west coast and export districts; W. C. Matthews, assistant director of sales in charge of the Lake Superior, Duluth, and Denver districts; J. F. Van Leer, in charge of the Eastern and Southern districts; C. M. Barton, in charge of the technical division, whose duty it was to investigate complaints and see that our product was doing proper work; J. W. Martinas, sales auditor, who had supervision over the expenses of and auditing the expenses of the sales department; W. S. Simpson, who had charge of the statistical division; George H. Kerr, manager of the trade record division; E. B. Jones, manager of the storage and delivery division; H. A. Lindsay, manager of the sales order and stock bureau, all divisions of the sales department.

1203

Q. Now, these were employees of the du Pont Company, every one that you have mentioned? A. Yes.

Q. There was no outsider on that sales board, no one representing any other company? A. Oh, no.

Q. None representing the Equitable Company? A. No, indeed.

Q. No one representing the Austin Company? A. No, sir.

1205 Q. No one representing the Buckeye Company? A. No, sir.

Q. Or the Miami Company? A. No, sir.

Q. It was just simply your own sales board, a means by which you transacted the business for your company? A. Purely and simply.

Q. You did not apportion any trade with any other companies? A. No, indeed.

Q. And you did not attempt to fix a price for any other company to sell at, or anything of that kind? A. No, sir.

1206 Q. You simply went over your own trade conditions and the condition of your business at the meetings of this sales board? A. Yes, sir, du Pont business.

Q. Now, prior to 1904, you said you were connected with the Lake Superior Consolidated. That is a railroad and not a powder company, is it not? A. Well, there were 23 corporations merged in the Lake Superior. We did not manufacture powder.

Q. You did not manufacture powder at all? A. No, sir.

Q. You had nothing to do with the du Pont Company? A. No, sir.

Q. You had no knowledge, I think you said, of the Rand Company, the Hazard Company, the Chattanooga Company, or the Indiana Company, or the

Phoenix Company, separate corporations at all? A. No; not any knowledge except hearsay. I knew they had been merged at some previous time, before my advent into the du Pont Company. I had no relation with them as companies at all.

Q. They were not operating when you went there? A. No, sir.

Q. Neither did you have any knowledge about how their product had been marketed, did you, except from hearsay? A. No.

Q. You were requested, I believe, Mr. Coyne, to 1208
—you have been shown two documents that have been marked 1126 and 1127 by Mr. Abbott. I now show you those again and ask you whether or not they were compiled under your direction? A. They were.

Q. And from data which you had available? A. Yes, sir.

Q. Now, for the years 1905, 1906 and 1907, did you ever see any signed statement of competitors as to their capacity and output for those years? A. As to the years 1905, 1906 and 1907?

Q. Yes; or any of them? A. I think Mr. Scarlett, 1209
in the Government suit, showed me, in fact, gave me the 1905, 1906 and 1907 sworn statements of all the powder companies that had compiled them for him. It was not totalled up, and he wanted us to do it.

Q. This information contained upon these exhibits was in part obtained, particularly with reference to blasting powder, from these sworn statements of competitors? A. For the years mentioned —we changed our records, because we had absolute information, and we went back and altered all our records to conform to the data made up from the sworn statements of our competitors for those three years, so for those three years it is correct.

1210 Q. You spoke something about a price in the Pittsburgh district of 95 cents for powder. When was that made? A. One particular—I think in October, 1905, as I recall it, we made a price of 95 cents delivered to the Frick interests, the Union Supply Company.

Q. Now, then, you spoke of a 95-cent price in the Chicago district. When was that made? A. May 5, 1905, that was authorized.

1211 Q. Was that due to the competition in that district? A. Yes, sir; it was. We have pretty general information that—in fact, information from all sources, that that price was obtaining all through the district.

Q. Had you had information that competitors were selling below that price, 95 cents? A. I won't say that we had any information that they were selling below that price, but we knew that reputable powder concerns, old line powder companies, or the new people who were making pretty good powder, were quoting 95 cents

1212 Q. And so because of the fact that your competitors were making a price of 95 cents, you lowered your price to 95 cents, is that right? A. Yes, sir.

Q. When you speak of competitors making pretty good powder at that time, you do not refer to the Buckeye as making good powder, do you? A. Well, I——

Objected to. Question withdrawn.

Mr. Katzenbach: That is all.

Redirect examination by Mr. Abbott:

Q. Mr. Coyne, where is this signed statement that you speak of that you saw with reference to the

competitors' business in possession of the Government at one time? A. It was not a signed statement in toto. Mr. Scarlett——

Q. Wait a moment; do you know where it is at the present time? A. No.

Q. Who was it sworn to by? A. The executive officer of the Powder Company making it, some executive officer of the Powder Company making it.

Q. Do you know whether that sworn statement was used in the Government exhibits in any way? A. I believe it was. 1214

Q. Could you—I don't like to put you to any trouble, but I have no recollection of the statement, and I would like to have you locate it for me in some way. Can you indicate about where it was and when it was used? A. If you will allow me to state my recollection about the whole procedure,——

Q. Certainly. A. I don't know that I can help you now, but I know I was on the stand several times, and in one of the examinations there was some dispute about the accuracy of our records, such as we handed in here, and Mr. Scarlett, for the Government, asked that we give him the same data that we have produced here, and we did so—I am getting a little ahead of the story, at that time its accuracy was somewhat questioned, and I made the suggestion that the Government could easily check our figures by asking each of the powder companies manufacturing "B" blasting powder to state what their sales had been for three or four years previous, and Mr. Scarlett said he would do it. I gave him a list of all the powder companies in the United States, I think we had all the names, and he asked each one of them to submit him a sworn statement, and they did so. When he got the batch of the sworn statements, he was pretty 1215

busy, and I happened to be over there and was leaving one day and he asked me if I would take it over to our office, and have our boys who were familiar with it, add it for him, and bring it back in statement form, and I am quite certain we did that, and incidentally kept a copy of it.

Q. Now, is it not a fact that the information which you have indicated which was put into the Government records was simply a tabulated statement, and that there is no sworn statement con-
1217 cerning that matter there? A. I am very much mistaken if each powder company did not swear to its statement.

Q. I show you Government's Exhibits 393, 394, 395, 396 and 397, and ask you to examine them, and state whether or not that is the information you have in mind? A. This says, "Table showing the total sales reported under oath of black blasting powder for the calendar years 1905 to 1907, both inclusive," I think that is it.

Q. That is the table that you have in mind? A.
1218 Yes, sir.

Q. And the subsequent tables,—look at the subsequent ones there? A. What table did you ask me to start on, is this the first one?

Q. Well, start with that, and then go this way, down to 397. A. Yes, sir; I think that is what I had reference to.

Q. The statement as it is here is not sworn to, but is tabulated as having been sworn to. That is what you had in mind? A. Yes, sir; I cannot make those fine distinctions.

Q. Mr. Coyne, in answer to certain questions put to you by Mr. Katzenbach with reference to various conditions which prevailed in various districts, and the effect on prices in those districts at certain times, I will ask you to state whether those same

conditions prevailed at other times, at times when other prices than those you have been interrogated about prevailed. In other words, were those conditions normal or abnormal?

Q. I will ask you, so as to be specific, whether the conditions which you have indicated as affecting prices in the various districts obtained during the years 1903 to 1908 inclusive, covering the period that is covered by Plaintiff's Exhibit 1219 for identification? A. I don't believe I understand that question, Mr. Abbott. 1220

Q. Well, now, you said for instance, in the Hazleton district that there was an inferior quality of powder required and used in that district which affected the price of that district? A. Yes, sir.

Q. Did that condition prevail during all these times? A. During the entire six years; yes, sir.

Q. Now, in another district, you said that there were, in the San Francisco district, for instance, you said that labor was higher out there. Did that condition prevail during all that time? A. To the best of my recollection, yes, sir; and obtains yet. 1221

Q. And in the Scranton and Hazleton districts you said there were different grades of powder required for either of these two districts. Did that condition obtain during all that time? A. Yes, sir.

Q. These several years? A. Yes, sir.

Q. In the Denver district you said that freight, excess freight, affected the price out there. Did that condition obtain during the years 1903 to 1908 inclusive? A. Yes, sir.

Q. Now, as a matter of fact, in regard to that district, were not your mills 500 miles, at least 500 miles nearer to Denver points of distribution and consumption in the Denver district than any other mills? A. No.

1222 Q. Well, comparing it as between the Buckeye Powder Company and your plants, how much nearer were your plants to Denver, for instance, than the Buckeye Powder Company's plant? (Objection overruled.) A. We had several plants, if you will allow me a moment to fix them in my mind as to distance from Denver. I think we were 300 miles nearer Denver than Mr. Waddell was with our Mooar mill, and I don't believe that the Pittsburg and Columbus mills in southeastern Kansas, the
1223 way the freight travelled, were any nearr to Denver. At any rate, I think they did not have any better freight rate than Mooar.

Q. How about your nearness to Pueblo? A. The Excelsior mill at Kansas City was nearer than any of our mills.

Q. How about the distance of your Columbus plant from Pueblo, wasn't it very much nearer? A. It was very much nearer, but if my recollection is not wrong, at that time we had no better freight rates to the Colorado district than we had from
1224 Moar.

Q. Well, as a matter of fact then, you had the advantage in your favor in the freight rate to the Denver district, did you not, over the Buckeye Powder Company? A. Yes; I think we had 3 cents a keg over the Buckeye.

Q. Now, in the Birmingham district you said that labor and material cost was higher, and that that was largely retail trade. Did that condition obtain during the years 1903 to 1908? A. If I said labor, I think I made a mistake. What I intended was the material cost was higher on account of a number of conditions, one of which was not labor.

Q. That condition obtained during this whole period, did it? A. To the best of my knowledge, yes.

Q. In that connection, isn't it true that wherever there are team deliveries from any manufacturing plant, that that is the cheapest and best service that can be had for the delivery of powder? A. Where you team direct from the mill, yes.

Q. And a mill having that advantage over another mill, would have a very distinct advantage in the making of prices, would it not? A. I think there is very little team delivery made in any district from a mill at less than 5 cents a keg, and of course that would be about 20 cents a hundred. 1226

Q. Now, taking in this district where you stated that they made a certain kind of sausage? A. Sausage powder, we call it.

Q. Sausage powder. Now, that same condition obtained from 1903 to 1908 inclusive? A. Yes, sir.

Q. So that as a matter of fact these various conditions that you have indicated as prevailing in various districts that affected the districts, that affected prices in those districts, obtained during the entire period covered by the table which is known as Plaintiff's identification 1219? A. You refer to the physical conditions? 1227

Q. I am referring to the conditions which you stated as having made the difference in prices between some of these districts? A. Yes; those conditions in each district obtained.

Q. All along? A. Practically so; yes.

Q. So that under these conditions the variations in these districts from time to time could not have been affected by any of these circumstances which you have related in one year any more than in any other year, could they? A. I think not, if I understand your question.

Q. Now, in the New York district, for instance, you spoke of certain local conditions that prevailed in New York City and thereabouts, which made it

necessary for you to charge more for your powder there. How far does that New York district extend, what territory does it include? A. The New York district consisted of the New England States, New York, part of New Jersey, Cuba——

Q. The Island of Cuba? A. The Island of Cuba and Mexico, and South America.

Q. That is all covered by the New York district? A. Yes.

1229 Q. Now then did those conditions that you have stated as applying to the New York district, apply to all of that territory that you have enumerated as being within that district, the special package, etc. A. No; only for export to South America.

Q. Then what you said about special conditions applying to New York City, you had in mind merely the New York City district, around New York City? A. No; I mean especially conditions, if I recall my testimony right, high freight rates, stringent municipal regulations——

Q. That relates to New York City, does it not?
1230 A. My intention was to show that that applied to Boston and Portland, or all Massachusetts as a matter of fact has very stringent laws, and Maine has, and it is unusually expensive to do business there.

Q. Whatever those conditions were though, they obtained during the whole period from 1903 to 1908? A. Yes.

Q. You gave a list of names of persons who were members of the sales board during a certain period of your connection with the company. Did you wish to have it understood that those persons were the only members of that board during the period that you were in the employ of the company? A. From the time I became director of sales in 1907, from that time on, the men I mentioned were the

only members of the sales board, with the exception of one man whom I forgot, Mr. E. C. Ferraday, manager of the contracting division.

Q. Did you give the name of Mr. Haskell in the list? If so, I didn't get it? A. In 1905, when I became a member of the sales board as traffic manager, Mr. Haskell, as I think I testified, was chairman of the sales board, Mr. J. A. Haskell.

Q. Do you have any knowledge as to whether or not Mr. Haskell, by order, originally established that Board himself? I am simply asking you as 1232
to your own knowledge on that subject? A. I have no such knowledge.

Q. Now, you stated that you came in competition in certain prices which you made, or for whom you made a 95 cent rate, beginning May 5, 1905, by reason of the fact that you got certain information from certain customers concerning prices which had been made by various of your competitors. Will you state who those customers were that gave you any such information? A. I don't think I said we got the information from the customers direct. 1233

Q. Will you explain what it was that you did say? A. We got it from our salesmen, and they in turn, I presume, got it from the customers.

Q. Then will you state what customers they were that your salesmen got the information from? A. I cannot say, I cannot answer that question, because I don't know; but I can tell you what customers we made the 95 cent price to in the start off. We never made——

Q. In what district were they located? A. The Chicago District.

Q. Have you got a list of all the customers to whom you made the 95 cent price, during the time it was in existence? A. No, I have not. I know a few that we made the price to in the start.

Q. Is the list large or small, and would it be very convenient for you to prepare such a list? A. For what period?

Q. During the period that the 95 cent rate prevailed? A. I think I can make you such a list.

Q. Will you do that? A. Yes.

Q. Now you stated that you had certain competitors in supply explosives in the Pittsburgh District. If I do not give these names correctly, please correct me, I took them down as you went along,
1235 and I may not have it accurate. Now, take the American Powder Company. Did that company sell powder in competition with you in the Pittsburgh District? A. I think so.

Q. Can you tell with any particular—can you give me the name of any particular customer that you came in competition with them concerning? A. No—in the Pittsburgh District?

Q. Yes. A. I cannot. I know that they come in competition, though, because they buy their products from the Miami Powder Company that has a
1236 mill near Cincinnati, and all those Cincinnati mills competed in the Pittsburgh District.

Q. Then it was the Miami Powder Company and not the American Powder Company. The American Powder Company is located in Boston, is it not? A. The American Powder Company buys and sells a large part of the output of the Miami Powder Company and competes everywhere.

Q. Now, can you remember the names of the customers that you came in contact with that way, who received Miami powder? A. No, that is too far back.

Q. Now, take the Equitable Powder Company. Did they sell in competition with you in the Pittsburgh District? A. I don't think my testimony included the Equitable Powder Company as a competitor in the Pittsburgh District.

Q. How about the United States? A. I didn't mention the United States as a competitor in the Pittsburgh District.

Q. What district were those two competitors in? A. In the Chicago, St. Louis and Kansas City District.

Q. And the Egyptian the same? A. Yes, sir.

Q. The Austin, the Lofty, the Miller, were in the Pittsburgh District? A. The Austin competed in both the Pittsburgh and Chicago Districts and the Lofty and the Miller in the Pittsburgh District. 1238

Q. Now, there are a number of plants that are not set forth in this list of competing plants on Plaintiff's identification 1126, and I would ask you as I read these names, to tell me whether any of them to your knowledge shipped to any competitor or customer of yours in any of the districts where you sold black blasting powder, and I will ask you to check me as I read the names.

Mr. Katzenbach: That is competition in any district? 1239

Mr. Abbott: Yes.

Q. Take the Tomhicken Powder Company. Did you come in contact with any customer of the Tomhicken Powder Company? A. That was in the Hazelton District, was it not? That was one of the smaller ones, I would not remember that so well.

Q. Take the Tennessee Powder Company, how about that? A. That came in competition in the Chicago and St. Louis District.

Q. Was that an important factor? A. Is that the powder company that had a mill at Jellico?

Q. Yes. A. It was quite an important factor in making prices.

1240 Q. Do you recall when they became a competitor of yours? A. I do not.

Q. Can you recall from memory what was the output of that mill in 1907? A. No.

Q. Can you recall what was the output of that mill in 1908? A. No.

Q. I will ask you to look at this statement and see if you can tell from this statement what the output was in 1907? A. In 1907, it did not start operation until August 1, 1907.

1241 Q. How much was it for that year? A. 75,000 kegs, according to this statement.

Q. Is that the output? A. That is the—no, I beg your pardon, the capacity was 70,000. The output was 43,000 kegs.

Q. What was the output in 1908? A. 58,000 kegs.

Q. Now, do you know of any customer of yours that would come in competition with this company concerning the sale of black blasting powder? A. I cannot name them, but I know that we lost several customers to that concern.

1242 Q. What mill did you have that was correspondingly located, and from which you would supply that trade in competition with the Tennessee Powder Company? A. I think Chattanooga and Belleville.

Q. Now, the output of the Chattanooga and Belleville Company during the year 1907, was how much, can you state? A. Chattanooga mills and Belleville mills?

Q. Well, Chattanooga for the present? A. Well, I could make a pretty close guess, I think. I should say roughly 250,000 kegs.

Q. I will ask you to look at the statement and see if you can and state more definitely what it was in 1907? A. The output was 298,000 kegs.

Q. What was the output in 1908? A. 171,000 kegs.

Q. Now, will you look at the output of the Belleville mill at the same time in 1907 and 1908? A. In 1907 the Belleville mill output was 317,000 kegs, and very early in 1908 the plant was shut down by an explosion, and in 1908 it produced but 9,000 kegs.

Q. So that you had during the year 1907 a total of 298,000 kegs for the Chattanooga Company——? 1244
A. The Chattanooga mill, not company.

Q. Chattanooga mill. And 317,000 kegs for the Belleville mill, in competition with the Tennessee powder plant, with an output of 43,000 kegs? A. Well, in that section we had very much more competition than the Rand.

Q. I am asking you about this mill, I want to show how important it was so far as a competitor is concerned? A. That was one of several mills competing in that territory.

Q. I am going to ask you about some of the others. Take the Standard Powder Company, for 1245
instance, do you remember about that plant? A. At Horrell Station, Pa?

Q. Yes. A. Yes.

Q. How much of a plant was that? I will put the question in this way: Do you know what their output was in 1907? A. No, sir; I cannot tell you those things from memory.

Q. Do you know what the output was in 1908? A. I cannot tell from memory.

Q. If this statement says it was 2,000 kegs in 1907, and 7,000 kegs in 1908, then that is correct? A. I would say so, but it doesn't say that, does it?

Q. I don't want to misquote it, if you will look at it and say whether it does? A. I would be surprised if they didn't make more powder than that

in 1907 and 1908. (Witness examines Exhibit 1127.) A. (Continuing) Oh, yes; it was destroyed by an explosion in 1908, and did not resume operations.

Q. Does not that statement show that it had an output of 2,000 kegs in 1907 and 7,000 kegs in 1908? A. That is right. I had forgotten the date they were destroyed by an explosion. I knew the capacity was very much greater.

1247 Q. What mill did you have that was in competition with that mill? A. Fairchance and Youngstown.

Q. What was the output of the Fairchance plant in 1907? A. I will stand on the record. There is no use asking me this, because I positively cannot remember; there were so many mills.

Q. If this record shows that it had 384,000 kegs in 1907 and 244,000 kegs in 1908, that is correct, is it? A. Yes, sir.

Q. And that would be in competition with the Standard Powder Company with 2,000 kegs in 1907 and 7,000 kegs in 1908. Now, the Shamokin Pow-

1248 der Company, was that one of your competitors? A. Yes, sir.

Q. What was the output of that—I will read it to you, because you say you will stand on this record—the output of that plant in 1907 shows that it was 76,000 and in 1908 it was 67,000 kegs. Now, what plants did you have that were in competition with that? A. I think the Shenandoah and Ferndale Mills.

Q. Shenandoah—well, if this table shows that in 1907 the Shenandoah had 99,000 kegs output and in 1908 103,000 kegs output, that is correct, is it? A. Yes, sir.

Q. What was the other? A. Shenandoah was the one you just read?

Q. Yes. A. Ferndale.

Q. If this statement shows that in 1907 the Ferndale had 238,000 kegs and in 1908, 162,000 kegs output, that is correct? A. Yes, sir.

Q. Was the Moosic a competitor of that ocmpany at that time? A. The Moosic was one of our companies.

Q. I know, but was that powder in competition with this Shamokin Powder Company at that time? A. I would not be positive. Moosic might have been in competition with Shamokin, but as I recall 1250
it, Shenandoah and Ferndale only got up there.

Q. What plant would there be in competition with the Moosic? A. Moosic is our own plant.

Q. I know that, but was there any plant operated by any so-called independent manufacturer at that time that was in competition with the Moosic? A. There were five powder companies in the Hazleton district, and I think the Miller Company——

Q. What were the names of those five powder companies? A. The Roberts was one, the Black Diamond, the Nuremberg——

Q. Is that all? A. I think there were five of 1251
them, I cannot recall the others. I can pick them out on that list.

Q. If this table shows that in 1907 the Black Diamond had an output of 32,000 kegs, and in 1908 an output of 46,000 kegs, that is correct, is it? A. Yes, sir.

Q. And as to the Nuremberg, if it shows that the Nuremberg had 22,000 kegs in 1907, and 31,000 kegs in 1908, that is correct? A. Yes, sir.

Q. As to the Roberts, if this table shows that it had 67,000 kegs in 1907, and 60,000 kegs in 1908, that is correct? A. Yes, sir.

Q. Now then the Moosic? A. I think there are a couple of others, if you will let me look at the table, I think I can pick them out.

Q. Certainly. A. The Black Diamond I gave you, didn't I?

Q. Yes; I read that one. A. The Cresona.

Q. What does it show there that the Cresona had in 1907 and 1908? A. 60,000 in 1907 and 53,000 in 1908. The Lakeside Powder Company had a capacity of 24,000 in 1907. The plant was dismantled in 1908.

Q. Did you read the Locust Mountain? A. No; I did not.

1253 Q. The Locust Mountain was in there 19,000 output—I am giving you output, not capacity—19,000 output in 1907, and 27,000 in 1908. A. The Lofty, you read that?

Q. I think not. A. The Lofty is 18,000 and 15,000. The Nuremberg you read. The Roberts Powder Company.

Q. I read that. A. That is all.

Q. Now what plants including the Moosic, did you have located relatively to these plants whose names you have just read? A. We had the Shenandoah plant and the Ferndale plant, and there

1254 were some more plants in the anthracite region, I don't just recall their names, I can point them out if you will give me the list.

Q. Was the Oliver one? A. The Oliver was one.

Q. I will hand this to you in a moment, but I will ask you now, if this table shows that in 1907 the Moosic had 265,000 and in 1908, 269,000 kegs, that is correct? A. Yes, sir.

Q. If it shows that the Oliver has 243,000 in 1907, and 255,000 in 1908, that is correct? A. Yes, sir.

Q. If it shows that the Shenandoah had 99,000 in 1907 and 103,000 in 1908, that is correct? A. Yes, sir.

Q. If it shows that the Ferndale had 238,000 kegs

in 1907 and 162,000 kegs in 1908, that is correct? A. Yes, sir.

Q. Now, those were all in competition with those other mills whose names you have just indicated? A. Yes, sir.

Q. Now, you said that there were others that possibly you could tell about if you saw the statement? A. The Consumers was one.

Q. What was the output of that in 1907 and 1908? A. In 1907 220,000 kegs, in 1908 235,000 kegs.

The Enterprise at Gracedale, Pa., 161,000 and 1256
173,000.

The Rushdale, 221,000 and 230,000.

The Tamaqua, 21,000 in 1907, nothing in 1908. The plant was dismantled.

The Wapwalopen, 331,000 and 324,000.

Q. Was anything shipped from the Brandywine mills into that district? A. I think not, although there might have been.

Q. Was anything shipped from the Laflin & Rand mills to that district? A. There were no Laflin & Rand mills at that time, all du Pont mills.

Q. Do you know any mills that had been formerly known as Laflin & Rand mills that were in existence at that time? A. As I remember, the Rosendale and Wayne, that is, in that section of the country. 1257

Q. The Rosendale mills had an output of 192,000 kegs in 1907, 25,000 kegs in 1908, is that correct? A. Yes, sir.

Q. What was the reason for that great variation of 192,000 and 25,000, if you know? A. As I recall it Rosendale was only used as an emergency mill, it was four miles from the railroad, and whenever we could get along without its output, we did. It was so expensive to do business there.

Q. Now, take the Buckeye Powder Company. In

1258 *William Coyne—Redirect*

1907, if this table shows that the Buckeye Powder Company had an output of 32,000 kegs, and in 1908, it had an output of 46,000 kegs—if this table shows that the Buckeye Powder Company had an output of 85,000 kegs in 1907, and 50,000 kegs in 1908, that is correct as far as you know? A. As far as our knowledge goes, yes, sir.

Q. Now, what plants did you have at that time that were selling powder in competition with the Buckeye Powder Company? A. During 1907 and
1259 1908?

Q. Yes. A. Mooar, Iowa.

Q. I will take these separately. This table shows that the Moar, Iowa, plant had an output of 1,172,000 kegs in 1907, that is correct? A. Yes, sir.

Q. And that it had 1,090,000 kegs in 1908, that is correct? A. Yes, sir. The Moar is the biggest mill in the world.

Q. What is the next one? A. Belleville.

Q. And if this table shows that Belleville had an output of 317,000 kegs in 1907, and 9,000 kegs in 1908, is that correct? A. Yes, sir.
1260

Q. What is the reason for that great variation? A. They had an explosion early in 1908, as I recall it, January 9th, and they were shut down for a year and a half by an injunction gotten out by the City of Belleville.

Q. Take the output that prevailed during the preceding years, 1903 to 1907, according to this table, would that be its normal output during that time, from 1903 to 1907 inclusive, the output of the mill was normal? A. The Belleville?

Q. Belleville? A. As far as I can remember I think it was.

Q. This 1908 was abnormal by reason of this explosion? A. Yes, sir.

Q. What was the other mill in that same district?

1261

A. The Fontenac was a competitor of the Buckeye mill.

Q. If this table shows that in 1907 the output of the Fontenac mill was 252,000 kegs, is that correct? A. Yes, sir.

Q. And in 1908 it was discontinued? A. It was entirely destroyed by an explosion in 1907.

Q. Now, what other mills? A. Pleasant Prairie, Wis.

Q. If the table shows that the output of that mill was 494,000 kegs in 1907, and 575,000 kegs in 1262
1908, is that correct? A. Yes, sir.

Q. What is the next mill in competition with the Buckeye? A. In the territory that the Buckeye covered, not as closely in competition with it of course as these mills that were within two or three hundred miles of it, but in adjacent territory, we had mills that competed with Buckeye, Youngstown for example.

Q. They had an output in 1907 of 228,000 kegs, and in 1908 of 189,000 kegs, is that correct? A. That is right.

1263

Q. Now, what other mills? A. If I mistake not, the Buckeye Company sold in Kansas, and even went to Texas with its output, and in that case we might say that our Pittsburg and Columbus, Kansas, mills competed with it although that is a little far fetched perhaps.

Q. Now the Columbus, Kansas mill, you mean at Turk, Kan.? A. Yes.

Q. That mill had an output of 445,000 kegs in 1907, and 382,000 in 1908? A. Yes, sir; that is right.

Q. Now, what other mill? A. Pittsburg mill, P. & K. it shows there I think.

Q. Oh, P. & K. 272,000 kegs in 1907 and 225,000 in 1908? A. That is right.

1264 Q. Now, any others? A. I think he got into the Chattanooga territory south of the Ohio River, but I am not certain about that. In that case our Chattanooga mills.

Q. 298,000 in 1907 and 171,000 in 1908? A. That is right.

Q. Can you think of any others? A. Kellogg, W. Va.

Q. 208,000 in 1907 and 124,000 in 1908. Any others? A. I think he came in competition with the
1265 Fairchance mill, Pennsylvania.

Q. 384,000 in 1907 and 244,000 in 1908. Any others? A. I don't recall any othes; I don't think there were any others.

Q. Now, there was also situated in the Pittsburg district, was there not, a plant known as the Equitable Powder Manufacturing Company plant? A. Yes, sir; there were about 11 other plants in the territory that I have outlined. Yes, sir; the Equitable and East Alton, and I think during that period they built a mill at Fort Smith, Ark.

1266 Q. This table shows that the Equitable had an output of 643,000 kegs in 1907 and 415,000 kegs in 1908, is that correct? A. That does not seem right.

Q. That is on the other table there. A. Let me see. I don't see why they should have less in 1908 than 1907. That is what it says, they have 643,000 in 1907 and 415,000 in 1908.

Q. Will you kindly look at that table and say what the Egyptian Powder Company had in that district—it was located in that district, was it not? A. Yes, sir; in southern Illinois, at Marion. The Egyptian had 257,000 in 1907, and 165,000 in 1908.

Q. Now, the Austin Powder Company, did they come into competition with the Buckeye Powder Company? A. Yes.

Q. They had an output of 502,000 in 1907, and

414,000 in 1908. Is that right? A. That looks right. There were several others in that territory, if you want the list.

Q. Now, mention the other mills, we want to get in all that there is in this, my knowledge of the powder business is not as accurate as yours? A. The United States.

Q. The United States had an output of 265,000 bags in 1907, and 236,000 kegs in 1908? A. I think that is right.

Q. What other one? A. The Miami. 1268

Q. That had an output of 585,000 in 1907, and 438,000 in 1908? A. I think that is right. The Senior.

Q. The Senior, that had an output of 209,000 in 1907 and 155,000 in 1908? A. That is about right, I should think, if the report states it. The King Powder Company.

Q. That had an output of 224,000 in 1907 and 210,000 in 1908? A. The Excelsior Powder Company.

Q. 194,000 in 1907 and 134,000 in 1908. A. The Burton Powder Company. 1269

Q. 170,000 in 1907 and 205,000 in 1908.

A. I think the Rand Powder Company of Tennessee figures in that.

Q. I will ask you to look at the statement and read it yourself? A. The Rand Powder Company of Tennessee in 1907 sold 149,000 kegs and in 1908 154,000 kegs.

Q. You say sold. A. I mean output.

Q. Do you know whether that company had any customers in what was known as the district covered by the Buckeye plant? A. They went quite a ways north; I would not say whether they went as far as the Ohio River or not, but I think they did. I won't be sure they did, but my impression is they did.

1270 The Western Powder Manufacturing Company, their output was 30,000 kegs in 1908.

Q. But that was a successor of the Buckeye Powder Company, was it not? A. Yes, sir.

Q. So that it was not a competitor, because it was a successor, the Buckeye Powder Company was out of business, was it not, when Western began to manufacture? A. When the Western began to manufacture, it was a competitor.

Q. Beg pardon. A. You are asking for the com-
1271 petitors of the Buckeye Powder Company?

Q. Yes. A. Oh, yes; you are right.

Plaintiff's Exhibits for identification Nos. 1126 and 1219 offered and received in evidence.

Q. Now, Mr. Coyne, referring to this letter of yourself to Mr. Waddell dated October 24, 1907, and admitted as Plaintiff's Exhibit No. 1221, you say that, on your cross examination, that you sent this out immediately following some shortage of your
1272 own, due to accident? A. It was a few days after the wiping out of our Fontenac, Indiana, plant.

Q. Yes; now, were all of these other plants that you have spoken of here, Mooar, Iowa, and all th others in the Chicago district, a list of which you have given—did they remain in operation at that time after this accident to the Fontenac Mills? A. The Belleville remained in action, in service, until the ninth of the following January, until it was put out of commission.

Q. Mooar, Iowa? A. Ran without trouble.

Q. Columbus, Kansas? A. Yes.

Q. And all the list that you mentioned as being in the same district, as Buckeye plant was located, all continued in operation just the same, did they not? A. Yes.

Q. Now, I will ask you to state why if this was

an emergency matter, as you have indicated, you used this expression in the letter: That you also asked to know what sized granes you can furnish, what quantity per month, and the number of months you could continue to supply it.

Q. Will you state why you made that inquiry if it was intended only for temporary purposes? A. Well, we did not know what our demand would be.

Q. Yes. A. It looked like there would be a tremendous business that fall, 1907. You will notice

1274

Q. Will you state to what other companies you sent this same inquiry, at the same time? A. I am quite certain we sent to Burton, Senior, King, may be Miami, and Equitable.

Q. Have you made any examination of the records to ascertain whether you did make this inquiry of those other mills? A. I know that I made an examination, and I know that we purchased about that time some powder from these other mills.

Q. Have you made any examination of your files to know whether you sent out a similar inquiry to 1275 this, to any of those other mills? A. No.

Q. You are testifying now purely from your recollection? A. Recollection, that is all.

Q. How long did you continue to make purchases of powder from the Senior Powder Mills? A. I cannot answer from memory, but I should imagine that early in the following year we would cease, because of the strong demand for powder, which began to drop off a little along February and March.

Q. Do you know at this time, how many kegs of powder you bought from the Senior Powder Mills? A. I have a statement in my pocket of what we bought at that time.

Q. Will you look at the statement and give me

the information? A. We bought 3,200 kegs from Senior.

Q. Now, when was that? A. In October, 1907.

Q. Did you buy any from Senior? A. That was the last purchase from Senior.

Q. Now, what other mills did you make purchases from? A. We bought from the King Company 3,000 kegs in October, 1907; 5,531 kegs in November.

1277 Q. 65? A. 5,531. 2,900 kegs in December, and in January 1,600 kegs. We bought from the Miami Powder Company in October, 1907, 400 kegs. In November, 2,000 kegs; in December, 500 kegs. We bought from the United States Powder Company 2,800 kegs in October, and none thereafter. We bought from the Burton Powder Company 2,400 kegs in November, and none thereafter; that is down to the end of 1908.

Q. Now, did you ever rebuild this mill of the Indiana Powder Company that was destroyed? A. No, we could not. We would not be allowed to

1278 build. It killed so many people and did damage so many miles in extent, there was sentiment there that made our people feel they could not.

Q. Did you ever build any mill to take the place of that? A. Yes, we enlarged the Moar mills' capacity, and the Pleasant Prairie—the mills' capacity.

Q. How much did you increase the Prairie Mills? A. I do not recall.

Q. Just roughly? A. Well, I think it was a thousand kegs a day.

Q. And how much did you increase Mooar, Iowa? A. Well, I would say from recollection, that at least a thousand, and may be 1,500 kegs a day, but the table will indicate that. The table will give you that information, Mr. Abbott.

Q. Where are the United Powder Mills located? A. Coal Mount, Indiana.

Q. How far is that from the Indiana powder plant that was in existence? A. My recollection is about 80 miles; it may not be quite so far, and may be a little further.

Q. Did you buy any powder of the United States Powder Mills? A. I think the record indicated that we bought 2,400 kegs. I will confirm that, if you want me to—about 2,800 kegs from them in October. 1280

Q. October, 1907? A. Yes.

Q. Now, I find that in summing up all the powder that you bought from other companies, a list of which you have given us, about the time of this explosion, that it totals a sum of 29,211 kegs; is that correct? A. I think that is about correct. I could have given you that total, I had it here. 24,331.

Q. Now, that, as I understand it, supplied your necessities for all your customers that might have been inconvenienced by this explosion of the Indiana Powder Company's plant, outside of what you 1281 were able to supply from your own mills? A. Yes, because the panic started, if you will remember.

Q. I beg your pardon? A. We were disappointed in the volume of our business. The panic started, and we later found that we need not have bought that much.

Q. That, however, did supply you in the circumstances? A. Yes.

Mr. Abbott: That is all.

Re-cross examination by Mr. Katzenbach:

Q. Mr. Coyne, you have stated that the panic caused a reduction in the output and sale of powder; what panic did you refer to? A. Well, the

slowing down of business generally, that commenced about that time, in 1907.

Q. In October, 1907, is that the panic that you refer to? A. Yes, that is the panic.

Q. Well, now, as the result of that panic, how much did the output of powder in the country fall to during the year 1908; can you give those figures? A. I think the table shows that exactly, if I may be allowed to refresh my memory.

Q. I show you a table here that I will ask to have
1283 marked (handing same to witness).

By Mr. Button:

Q. Have you the original? A. I have it in my valise.

Q. Get it. A. (Witness obtained paper.)

Q. Have you any data that would refresh your memory as to the falling off of the business after the panic of 1907? A. I think I have here our own compilation.

Q. Well, will you state——
1284

By Mr. Abbott:

Q. Just a moment; is this something that you have made up yourself? A. Some of it is. I have not found the table yet. I can tell you when I find it whether I made it up myself.

Mr. Katzenbach: Just find it, please.

The Witness: Yes, I have a record here that I have prepared from our office records showing the falling off in the black powder trade between 1907 and 1908.

By Mr. Abbott:

Q. Is this something you made up yourself? A. Something I have made up.

Q. From the records in your office? A. From the records in my office.

Mr. Abbott: I have not any objection if it is made up from the records in your office, if your Honor please.

The Court: Very well. 1286

By Mr. Katzenbach:

Q. Now, will you state, Mr. Coyne, in kegs, how much the output was in 1907 of your company, and how much it was in 1908, and the amount that it fell off in 1908? A. Our total output in kegs of 25 pounds each in 1907——

By Mr. Abbott:

Q. Was how many? A. I say in kegs of 25 1287
pounds, our output in 1907 was 7,363,000 kegs; and in 1908, it fell to 5,635,000 kegs, or approximately a million, six hundred thousand kegs drop.

By Mr. Katzenbach:

Q. Now, then, what was the competitors' output in kegs in 1907?

By Mr. Abbott:

Q. Are you reading the competitors' output? A. From the same statement, yes, sir.

Q. Now, where did you get the data upon which

you made up that statement? A. It is the same data you have there.

By Mr. Katzenbach:

Q. Largely from the sworn statements of competitors, was it not? A. I think 1907 surely is, but I am not so certain about 1908.

By Mr. Abbott:

1289

Upon that, if your Honor please, I wish to interrogate the witness just a moment. I wish that you would make it a little more clear how you obtained the information which is set forth in that paper that you have before you, concerning the output—not concerning the capacity, but concerning the output—of the mills which you claim to be the mills of your competitors.

The Court: Yes, he can do that—if I re-
1290 remember rightly. I thought it was the output that he referred to before.

Mr. Abbott: Part of his information relates both to output and capacity.

The Court: I understood he is talking about it. Well, did you have any other source?

The Witness: Nothing, except as I related. I may explain the thing a little. You started offering this output. Now, output and sales are practically the same thing with us.

By Mr. Abbott:

Q. So that when you found one of your competitors had made a sale, you looked over the total

number of sales until you got information concerning that, and that total is output, so far as you are concerned? A. Yes.

Q. That is the way you arrived at it? A. Plus 15 per cent. that we allowed for laps and slams.

Q. And you verified that with those sworn statements which were afterwards furnished by the Government? A. Yes, sir.

Mr. Abbott: All right.

1292

By Mr. Katzenbach:

(The question was repeated by the reporter.)

A. 3,875,000 kegs.

Q. And what was the competitors' output in 1908? A. 3,206,000. They lost only about 650,000 kegs, as against our 1,600,000.

Q. Then the competitors lost a lesser percentage of their trade in 1908 than your company did? A. Very much. 1293

Q. Now, will you state whether there was any increase between the years 1903 and 1908, in the output of competitors? A. Yes, in the year 1903, our competitors had the capacity to manufacture 3,000,000 kegs, and in 1908, a capacity to manufacture 6,000,000 kegs.

Q. So that their capacity to manufacture had increased to 100 per cent. in the five years?

Mr. Abbott: We want, if your Honor please—the inquiry was output, and the answer was capacity.

The Court: That is so.

Mr. Katzenbach: Well, I will withdraw that question.

By Mr. Katzenbach:

Q. Now, will you state, Mr. Coyne, what was the capacity of your competitors in 1903? A. The capacity to manufacture?

Q. The capacity to manufacture? A. 3,000,000 kegs, according to our records.

Q. And what was the capacity of competitors to manufacture in 1908? A. 6,000,000.

Q. Then the capacity to manufacture had in-
1295 creased, of competitors, 100 per cent. in the five years, between 1903 and 1908, is that correct? A. Yes.

Q. Now, then, what was the output, and by output we will mean sales of competitors in 1903? A. 3,000,000 kegs—I beg your pardon. In 1903, 2,000,000 kegs.

—Q. And what were the sales of competitors in 1908; in other words, output of competitors in 1908? A. 3,200,000 kegs.

Q. Then during the five years between 1903 and 1908, the actual sales of competitors had increased
1296 1,200,000 kegs? A. Yes.

Q. Now, have you any figures which would give this comparison by years; first, as to the capacity of competitors in each year? A. I have.

Q. Will you give the increase of capacity of competitors in each year, between 1903 and 1908? A. I could give you the actual capacities if that will suit.

Q. Capacities to manufacture? A. In 1903, the competitors' capacity to manufacture was 2,100,000 kegs. In 1904, it was 3,015,000. In 1905, 3,697,000. In 1906, 4,600,000. In 1907, 4,622,000, and in 1908, 4,740,000.

Q. Are you certain that is capacity to manufacture that you have just been reading? A. No; I

read the wrong table. I find this says "Competitors' increased capacity" in Waddell's claim territory, that is the territory of Mr. Waddell. The increase in that territory alone is the figure.

Q. I want the United States. A. I have got the wrong table. Now I have it.

Q. Will you please give it, for the years? A. This is for the entire country.

Q. The entire country? A. In 1903, 3,031,000. In 1904, 4,005,000. In 1905, 4,702,000. In 1906, 5,700,000. In 1907, 5,861,000. In 1908, 5,957,000. 1298

Q. Now, you know the territory claimed, or rather mentioned in this case as Buckeye territory, do you not? A. Yes.

Q. Will you state how the capacity of manufacture of competitors increased in this so-called Buckeye territory, between the years 1903 and 1908, and give that increase, if any, from year to year.

The Court: He has given that by mistake. Let it stand. That is what he gave you.

1299

Q. Yes, that is what you gave by mistake. A. The competitive increase in the Waddell claimed territory, yes.

Q. And that would be the same answer to this question? A. Yes.

Q. Now, then, have you calculated any percentage of increase in competitors' capacity to manufacture between the years 1903 and 1908? A. Why, the figures indicate 100 per cent. increase, in capacity to manufacture.

Q. Yes; have you a table of that? A. There are a lot of tables.

Q. Now, Mr. Coyne, have you a table of that character? A. You mean the increase in percentage each year?

Q. Yes, each year. A. I have not any percentage, but I have it here in actual kegs, but which, of course, is only the difference between the years I gave you; for example, I give say the number of kegs, 1904, increase over 1903, and so on.

Q. Well, have you not those in percentages? A. You mean our——

Q. I will show you a paper here and ask you whether you—— A. You want to know the percentage of the trade held by us and the competi-
1301 tors?

Q. No. The percentage of increase of trade of competitors between 1903 and 1908.

By Mr. Abbott:

Q. Mr. Coyne, are you about to testify from your own personal knowledge, or from this document which was just shown you by Mr. Katzenbach? A. I am going to answer that question with the knowledge that I have obtained from a study of that question, and some figures I made up myself.
1302 Q. And not with reference to this document? A. No, I did not see anything there. That particular question you ask me, I could answer in toto. I know what our records indicate.

By Mr. Katzenbach:

Q. That would be satisfactory. A. Yes, I have that, Mr. Katzenbach. (Question repeated.) A. Uou want to know the percentage of the trade held by us and the competitors?

Q. No, the percentage of increase of trade of competitors between 1903 and 1908. A. In 1904, our competitors increased their business over 1903, 25.44 per cent., and we decreased 12.06 per cent.

We lost, in other words, 12.06 per cent. of our business in 1904 as against 1903. Then in 1905 against 1903, our competitors increased their business 54.99 per cent. I am referring to black powder now.

Q. Yes. A. And the country over.

By the Court:

Q. For blasting? A. Yes, sir; and we decreased 1905 versus 1903, 10.70 per cent. In 1906, our competitors increased their business 73.24 per cent. 1304
over what they had in 1903, and our increase was but 1.52 per cent. over what we had in 1903. In 1907, our competitors had increased their business 96.40 per cent. over what they had in 1903, and our increase was but 10.84. In 1908, the competitors had increased their capacity 62.49 per cent. over 1903, and we had decreased over 1903 15.17 per cent. As a matter of fact, there is only in the year 1908, according to our records—there are only 200,000 kegs more of blasting powder used in the United States than there was in the year 1903, and the competitors had increased their business 1,200,- 1305
000 kegs, and we had dropped our business 200,000 —no, we dropped over a million. In 1903, we sold 6,660,000 kegs. In 1908, we only sold 5,660,000.

By Mr. Katzenbach:

Q. Now, what effect had that increase in the competitors' output and in their business upon the price of blasting powder? Had it declined during those years? A. Well, naturally, there was a great scramble from 1904 on, when this big increase in the capacity came into operation. It really commenced in 1905, the heaviest part of it. A number of new companies had to get business, and there

was no more business than there was before they built their mills, and plenty of capacity in the country to take care of it; so there was a great scramble for what business there was offering, and consequent price war.

Re-direct examination by Mr. Abbott:

Q. Now, in making up your statements there, I did not catch it all—regarding the percentages of
1307 increase of manufacture of the various competitors, I will ask you to state whether you included all of the companies that are named in the Plaintiff's Exhibit No. 1127, the competitors? A. That is supposed to be the exact figure used there, Mr. Abbott.

Q. Well, now, I am going to read off a few names here, and ask you if you included these in that list. Equitable, Egyptian—— A. I included that in the list, the Equitable.

Q. Everything that was in this list? A. Yes, every powder company in that list of competitors.
1308 Q. You then read—your figures were made up from this table (indicating Exhibit 1127)? A. Yes, sir.

(Witness excused.)

WILLIAM COYNE was recalled as a witness, and having been previously duly sworn, testified further as follows:

Direct examination by Mr. Abbott:

Q. Mr. Coyne, you were to prepare, I believe, a statement covering certain prices, 95-cent price, with regard to customers to whom that price was

made. Have you prepared such a statement? A. I have.

Q. Will you produce it. A. (Witness produces statement and hands same to Mr. Abbott.)

(The document was marked for identification No. 1248.)

Mr. Abbott: Until we have a chance to examine that document, we have no further questions to ask Mr. Coyne, and I do not wish to keep Mr. Coyne here, so I will 1310
notify him if his presence is further needed.

Cross examination by Mr. Katzenbach:

Q. Just a moment. Mr. Coyne, at the top of this statement, which has been marked 1248 for identification, I notice that you have the words, "Authorized by the Sales Board, from May 1, 1905, to October 14, 1907, inclusive." A. No; the top is just a summarization, that I made myself, and no part of it.

Q. This is the same thing. You don't mean by 1311
that that this is a list of parties to whom the du Pont Company sold at that price, do you? A. No.

Q. Then what you mean is that this is simply a list to whom that price was quoted? A. Yes; the Sales Board authorized that price to be quoted.

Q. Yes. Mr. Coyne, you have examined the document known as the answer to the Bill of Particulars in this case, have you not? A. Yes, sir.

Q. It contains a list of the alleged customers of the Buckeye Powder Company? A. Yes, sir.

1312 *Lester D. King—Direct*

The deposition of LESTER D. KING, a witness produced for the plaintiff, being duly sworn, was read as follows:

Direct examination by Mr. Abbott:

He resides at Springfield, Illinois; he worked for about four months as a demonstrator for the Buckeye Powder Company, from the forepart of September, 1906, until the forepart of February,
1313 1907; his duties were to visit the different local unions of the different mines; some locals had written to the Buckeye Powder Company that they would like to try their powder, and it was his duty to visit those persons, and induce the operators of the mines to purchase Buckeye powder; the district which he visited was chiefly around Springfield and Peoria; that some time in January, 1907, he attended a meeting of the members of the local union which operated in Scholl's Mines, and the Peoria district, as the agent of the Buckeye Powder Com-
1314 pany.

Q. What powder was being used in the mine at that time? A. Du Pont.

Q. Was there anybody in that meeting representing the du Pont Company, if you know? (Objection overruled.)

Q. Do you know whether there was any person, any one present at that meeting, representing the du Pont powder? (Objection overruled.) A. Mr. Moffatt represented the du Pont people there that night.

Q. Who was Mr. Moffatt; can you describe him otherwise? (Objection overruled.) A. I don't know whether he was the agent for Dooley Brothers there or for the du Ponts, but he represented du Pont direct in his argument that night regarding powder."

Q. Was anything said by Mr. MMoffatt at that meeting? (Objection overruled.) A. After I had made my talk in explanation about the quality of the powder of the company I represented, Mr. Moffatt followed me and addressed the miners assembled, and in his address he stated that his company, that is, the du Pont, had a contract with the Sholl's Fuel Company which would hold them for about a year, and he didn't see how the men could do anything in regard to that contract; and they told him that they would have to furnish a better 1316
grade of powder, or they would show him that that contract wouldn't make any difference in regard to using the powder.

Q. Do you know what action, if any, was taken by that meeting with reference to the matter before them? (Objection overruled.) A. Why, it was left in the hands of the committee, there, to take action either one way or the other, in regard to the company.

Q. Do you know what, if any, action was taken by the committee? A. None to my knowledge.

Q. Of the committee, do you mean? A. The local 1317
union Pit Committee of the local there.

Cross examination by Mr. Button:

Q. Who sent you down there? A. Mr. Waddell, the president of the Buckeye Powder Company.

Q. You were aware when you went, that the mine was using du Pont powder? A. Not at that particular place.

Q. What powder did you think they were using? A. I didn't think anything about it.

Q. And you didn't know? A. No.

Q. You found out when you got there, they were using the du Pont powder? A. Yes, sir.

Q. You found they had a contract for some time to run? A. Only through the agent of the du Pont Powder Company.

Q. You had no doubt on the subject? A. I didn't question it.

Q. As soon as you discovered that fact, did you cease pushing Buckeye powder there? A. No, sir.

Q. You went right on getting them to break their contract? A. No, sir.

1319 Q. You did all you could to get them to change? A. I did all I could to get them to use Buckeye powder.

Q. Did you do all you could to get them to adopt Buckeye Powder? A. In an energetic business-like way.

Q. You did all you could to get them to change from du Pont to Buckeye at that time? A. I did all I could to show them the quality of the powder we got.

Q. Well, your object was to induce them to adopt it? A. Well, I guess it would be so considered.

1320 Q. Well, it was, wasn't it? A. You might so consider it.

Q. Were you there for any other purpose? A. No, sir.

Q. Did you succeed in getting them to break their contract with the du Pont Company? A. No, sir; I didn't attempt to get them to break it.

Q. Do you recollect all this conversation from your independent recollection at the present time? A. Not word for word.

Q. How long had you been with the Buckeye people at that time? A. Well, I remember—I suppose six or seven months up to that time, something in the neighborhood of that.

Q. What was the date of this meeting? A. I don't remember the exact date of it.

Q. Was this the only meeting of the sort that you attended? A. At that place?

Q. Anywhere? A. No, sir.

Q. You attended a great many? A. Several.

Q. Miners' meetings? A. Yes, sir.

Q. And always for the purpose of getting the miners to use Buckeye powder if you could? A. I guess so.

Q. You attended so many of these meetings, do you think you can distinguish one meeting from another? A. Not every one. 1322

Q. You have no doubt, I suppose, as to what was said and done at this particular meeting, as you have detailed it? Can you remember what was said at every one? A. Not every one.

Q. You have no doubt as to what was said and done at this particular meeting, as you have detailed it? A. In regard to those points that we were considering, and that we would consider would be a positive stand that most any party would take at a meeting of that kind, you would remember the instance.

Q. That is, you mean you know what you probably would have said on such an occasion; isn't that what you mean? A. Yes, that's about it. 1323

Q. You know what you probably would have said? A. Yes, sir.

Q. And that is what you mean here? A. Yes.

Q. Well now, what year was this? A. The year 1907.

Q. And what month? A. January.

Re-direct examination by Mr. Abbott:

Q. Have you or not, refreshed your memory concerning what occurred at this meeting in any manner, recently? A. I have, sir.

1324 Q. From what did you refresh your memory? A. From a letter I had written to Mr. Waddell about that time.

Q. I show you a paper writing and ask you to examine the same and state whether or not that is the letter you have reference to? A. This is the original which was sent to Mr. Waddell at that time.

Q. It is in your handwriting? A. Yes, sir.

1325 Letter offered in evidence. Objection sustained.

Deposition of HORACE CLARK, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Clark, where do you reside? A. Peoria.

1326 Q. How long have you resided in Peoria? A. All my life.

Q. Not being before a jury I am compelled to ask you how old you are? A. 49 years old, 9 months and 2 days.

Q. What is your business at the present time? A. President of the Clark Coal Company.

Q. What was your business during 1903 to 1909? A. General manager of the Clark Coal Company.

Q. At that time? A. At that time.

Q. Where were your mines located during the years 1903 to 1909? A. In Limestone Township, Peoria County.

Q. By what name or under what name are your mines operated? A. At that time it was the Empire Mines, No. 1 and 2.

Q. And they were under the Clark Coal Company? A. Yes, sir.

Q. They were known as the Clark Coal Company? A. Yes.

Q. In your mining operations did you use black blasting powder? A. Yes, sir.

Q. What kind of black blasting powder did you use? A. Generally du Pont.

Q. During the years 1903 and on, did you use du Pont powder? A. Partially so, yes.

Q. Did you know the corporation, or manufac- 1328
turing plant, known as the Buckeye Powder Company? A. Yes.

Q. Where was that located? A. About a mile and a half west of Edwards Station, Illinois. The main offices were in Peoria.

Q. A mile and a half west of Edwards? A. Yes.

Q. Were you in any way interested in the Buckeye Powder Company? A. Yes.

Q. What was the business of that company, if you know? A. Manufacturing powder.

Q. What kind of powder? A. Black powder. 1329

Q. Did you use any of the Buckeye powder in your coal mining operations? A. Yes.

Q. How much did you use? A. A very limited amount.

Q. You say you were interested in the Buckeye Powder Company. How much of an interest did you have in that company? A. $1,000 worth of stock.

Q. How long did you continue to own that stock, or rather when did you first acquire that stock? A. On its organization.

Q. Did you continue to ow nit when it went out of business? A. Yes.

Q. At that time? A. Yes.

Q. During the time that you were—during the

period from 1903 to 1909, when you said you were using du Pont powder, from whom did you purchase that powder? A. Their agents, Dooley Brothers.

Q. During the time I have mentioned? A. Yes, sir.

Q. And Dooley Brothers are located where? A. Peoria.

Q. Did you purchase your powder in the open market, or were you under contract? A. Under
1331 contract.

Q. Were you under contract during the entire period? A. Yes, sir.

Q. Have you got those contracts with you? A. No, sir, they have been destroyed.

Q. Do you remember what they provided as to their terms?

Mr. Katzenbach: That is objected to on the ground that the witness has stated that the contracts were with Dooley Brothers, and Dooley Brothers are not a defendant
1332 in this suit, or in any wise connected with it, being an independent firm, purchasing and selling powder, and for that reason the question is objected to as irrelevant and incompetent.

Mr. Abbott: I didn't understand the witness to say his contracts were with Dooley Brothers?

Mr. Katzenbach: I understood him to say so.

The Witness: They were the agents of the du Pont people.

Mr. Katzenbach:

Q. Was I mistaken, Mr. Clark, in my under-

standing that your statement was that your contracts were with the Dooley Brothers? A. Dooley Brothers, as the agents of the du Pont Company.

Q. Was the du Pont Company a party to the contracts? A. As I remember it, yes.

Mr. Abbott:

Q. Do you know what those contracts provided as to price you paid for your powder from time to time? A. I can not recall exactly the exact price we paid those particular years, but I think the price was $1.10—along about that. 1334

Q. Was any rebate provided for? A. Nothing but a cash discount.

Q. Being a stockholder in the Buckeye Powder Company and using black blasting powder, will you state what reason if any there was, for your not purchasing your black blasting powder of the Buckeye Powder Company? (Objection overruled.) A. Do you mean why we didn't buy all the powder—

Q. Yes, why didn't you purchase powder of that company that you were interested in? (Objection overruled.) A. The reason I bought the stock in 1335
the Buckeye Powder Company was to have an opportunity to have two sources of supply for our powder, believing that it was to the interest of any mine to have two kinds of powder on sale. I wasn't able to buy in large quantities Buckeye Powder. I was not able to buy any large quantity of it because the miners wouldn't use it.

Q. Your miners would not use it? A. No.

Q. That condition continued did it, or did it not, during the period from 1903 to 1909? (Objection overruled.) A. Do you mean why we didn't buy all the powder?

Q. Yes. Now answer my question. I will ask you whether that continued, whether that condition did continue, and how long it continued after the

Buckeye Powder Company commenced its operations? A. All the time they were in business.

Q. I show you a letter, written on the letterhead of the Clark Coal Company, dated at Peoria, Illinois, December 28, 1907, and ask you to examine the same and state if you recognize the signature? A. I do.

Q. Whose signature is that? A. My own.

Q. That is your signature? A. Yes.

Q. Is that a letter you wrote? A. Yes.

1337

I offer the letter in evidence. Same received as Plaintiff's Exhibit P-96, and read to the jury as follows:

Peoria, Illinois, December 28, 1907. Buckeye Powder Company, Peoria, Illinois. Gentlemen: Mr. Waddell's letter of the 26th at hand. We only wish it was in our power to use Buckeye Powder exclusively, but as you know our miners positively will not use anything but du Pont, and much as we would like to help out our friends, it seems as if

1338 we can not do it. Perhaps during 1908 something will turn up whereby an effort can be made again for another trial, and we will be very glad to co-operate with you. Respectfully yours, Clark Coal & Coke Company, by Horace Clark, Secretary."

Q. Now, what powder are you using at the present time? (Objection overruled.) A. du Pont and Western.

Q. By Western powder, what do you mean? (Objection overruled.) A. The product of the Western Manufacturing Company.

Q. Where is that manufactured? (Objection overruled.) A. The former location, the same location as the Buckeye powder.

Q. Are you under contract at the present time for the purchase of black blasting powder? (Objection overruled.) A. Yes.

Q. With whom are you under contract? (Objection overruled.) A. Dooley Brothers, as agents for the du Pont Powder Company, and with the Western Powder Manufacturing Co.

"*Cross examination by Mr. Katzenbach*:

"Q. The miners are paid for screening the same 1340
price as they get for lump coal? A. Yes, sir.

"Q. And you thought by having a test in the mines the miners would become more careful and would use more care? A. Yes, sir.

"Q. And that was the primary reason for your test, as I take it? A. Yes, sir.

"Q. Are you still a stockholder in the Buckeye Powder Co.? A. No, sir.

"Q. To whom did you sell your stock and when did you sell it? A. I sold it about three years ago to somebody unknown to me. This transactions
was handled through the Merchants National Bank 1341
of this city.

"Q. You endorsed your stock certificate in blank and received the money for it? A. Yes, sir.

"Q. And have you ever found who was the purchaser of it? A. No.

"Q. Through what bank was the transaction made? A. The Merchants National.

"Q. The Merchants National Bank? A. Yes, sir.

"Q. Of Peoria? A. Yes, sir.

"Q. Who is the president of the bank? A. Ferdinand Luthy.

1342 *Samuel W. Stephens—Direct*

Deposition of SAMUEL W. STEPHENS, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Stephens, where do you reside? A. I live in Kansas City, Kansas, 905 Central Avenue.

Q. Where did you reside during the years 1905 and 1906? A. In 1905, I resided in Missouri, Adair
1343 County, adjacent to mine No. 31, Great Northern Fuel Company's mine, south of Novinger, about two miles, on the I & St. L. branch of the railroad.

Q. At that time, what business were you engaged in? A. Mine foreman for the Great Northern Fuel Company, for mine No. 31.

Q. As such, what were your duties? A. At that time I had supervision of the mine and the pay roll; I kept all the time; issued all the store orders; bought all supplies at the mine and checked and handled the output of the mine to the company's office in Novinger; and was in fact, in charge of
1344 everything connected with that mine.

Q. In your mining operations did you have occasion to use any black blasting powder? A. Well, we used a great deal of powder at the mine that was under my supervision, so far as the distribution and handling for the company was concerned; I had charge of ordering supplies, keeping the supplies and giving the supplies to the miners at that mine and to look after the results of the powder in and about the mine and safe guard the miners, so far as the use of powder at the mine was concerned.

Q. What kind of black blasting powder were you using in the early part of 1905? A. Well, my records show that we used du Pont——

Q. State what your recollection is regarding the

matter? A. I know we used du Pont powder.

Q. Any other? A. And I remember we introduced Buckeye powder.

Q. About what time was it that you introduced Buckeye powder? A. My recollection is about the first of June, 1905, I am not positive.

Q. How long did you continue the use of Buckeye powder? A. We used Buckeye powder until after we had had a strike and then that strike was, as near as I can remember, in July.

1346

Mr. Button: Same years?

A. In 1905, and I afterwards sold what Buckeye powder I had; I had 250 kegs on hand, or about that.

By Mr. Abbott:

Q. State according to the best of your recollection what was the occasion of this strike to which you have referred? A. Well, just previous to the time we had this strike our manager called me on the 'phone and said— — 1347

Q. Just state what you yourself know and omit any reference to what the general manager said to you? A. Well, the district foreman of the Mine Workers and another gentleman came down there—

Q. Who was the district foreman? A. Mr. Phillips.

Q. Who was the other gentleman? A. I can't recall his name; he was a representative of the du Pont Powder Company, introduced to me as such.

Q. Would you know the gentleman if you saw him? A. I ain't positive; he was rather a heavy man; it has been quite a while back, and I ain't positive that I would know the man. He was a man about the size of the man sitting over there.

Q. Which one? A. The heavier of the two men; about his size possibly not quite as heavy, but about his height.

Q. The gentleman you are pointing to,—is that the gentleman?

(Mr. Spicer stands up.)

A. That is the gentleman.

Q. That is Mr. Spicer? A. I thought it was Spen-
1349 cer, but it might have been Spicer; it is quite a long time, I haven't given this issue consideration; I have been called on suddenly.

Q. That is the man you were pointing to? A. Yes, sir.

Q. State what occurred at that time? A. Well, Mr. Spicer, or Spencer, and a man by the name of Phillips, who was a sub-district president for the Mine Workers in that district, they came down there and I introduced them to Mr. Hayes and Mr. Jackson and Mr. Bisby, was the Pit Committee at that time and they were talking about the Buckeye
1350 Powder. (Objection overruled.)

Q. This conversation occurred in your presence? A. Yes, sir.

Q. Can you relate what you heard at that time? (Objection overruled.) A. Well, Mr. Spencer and Mr. Phillips, I know they were coming, of course, and I took them down and introduced them to the committee, and I was of the understanding that it was relative to the use of powder; that was my understanding of it, that it was regarding the fact that we were using Buckeye Powder and we were going to use du Pont powder.

Q. You introduced these men to the committee for what purpose? A. For them to instruct the committee as to the fact that this was a non-union

powder and that the du Pont's was; and that we were willing and anxious for a change.

Q. How did you learn that the Buckeye powder was a non-union powder and the du Pont powder was a union powder; where did you get that information? A. That was the information I got from Mr. Spicer and Mr. Phillips; I got that information through the conversation we had at the time of the committee——

Q. What occurred after that? A. I left the committee and went down on about my work and the 1352
next think I knew I saw was a notice—a written notice at the top of the mine that there would be a meeting called at Novinger that evening to discuss non-union powder at Union hall.

Q. Have you ever seen that notice since?

Q. Do you know where the original notice is at this time? A. No.

Q. Do you recall whose name was signed to it? A. Yes.

Q. Whose? (Objection overruled. A. Joseph Rutherford.

1353

Q. Who is he? A. The secretary for the local union and check weighman for Mine 31.

Q. After that was posted, what occurred? A. I know that all the miners went to Novinger and the next morning they didn't come to work.

Q. What do you mean? A. They went to the local meeting and the next day we had a strike on.

Q. How did you receive that information? A. As foreman of the mines I had my engineer and my day man blow the whistles and get up the steam and the following A. M. none of the miners reported, and I went to the boarding house adjacent to the mine and Mr. Hayes informed me, as committee of the miners, that they had ordered a strike, and

that there would be no more work done until we had du Pont powder at that mine.

Q. At that time did you have any Buckeye powder on hand? (Objection overruled.) A. Yes, sir, about 250 kegs.

Q. At any time did you have any Buckeye powder on hand? A. Yes, sir; about 250 kegs.

Q. Did you succeed in using any of that powder afterwards? A. Not at that mine; I sold the powder to a small individual company that was digging
1355 coal for farmer trade located close to where 31 was.

Q. How long did that strike continue? A. I am not positive as to the exact time, but the best I can remember about a week or ten days.

Q. It lasted a week or ten days? A. Yes.

Q. How did it terminate? A. Well, I was instructed to get du Pont powder and I got a team and went up to No. 2 Rombauer.

Q. What did you do with the powder you got of Mr. Rombauer? A. Sold it to the miners.

1356 Q. From whom did you afterwards obtain your powder? A. I don't know; it was sent down there in a car and I unloaded it; I don't know anything about it.

Q. Did you continue to use du Pont powder from that time on? A. Yes.

Q. Did the miners come back to work and continue to work as soon as you supplied them with du Pont powder? A. Yes; I think it was about a week until we got du Pont powder, and then they went back to work; it might have been ten days.

Q. Referring to the date when you discontinued using Buckeye Powder as you stated a while ago, I think you said you thought it was in June, 1905? A. Yes.

Q. Will you state upon what you based that in-

formation? A. I believe it was June or July; I am not positive as to the exact date.

Q. Upon what do you base your recollection? A. Upon what do I base my recollection? On a record that I have of the powder on hand.

Q. Have you got that record in your possession? A. Yes, sir.

Q. Will you kindly examine it and refresh your memory as to the exact date, if you can, when you discontinued the use of Buckeye powder? A. It must have been September instead of July, we had 1358
this strike according to my record now. Here it was along between the 1st and the 15th of September as near as I can recall from this record; my memory serves me, it was in July, but I think from my record it was in September, between the 1st and 15th of September.

Cross examination by Mr. Button:

Q. Who was the general manager or president at that time? A. Mr. I. B. Grant was general manager. 1359

Q. Was he president of the company, too? A. I don't know that he held the title of president.

Q. How many mines did the company operate? A. Well, at the time I think we were operating Mine No. 1, Mine No. 23, Mine No. 21 and Mine No. 31 in that territory.

Redirect examination by Mr. Abbott:

Q. State if you know about how many kegs of powder were consumed in your Mine No. 31 over which you had charge, after this strike which you have testified occurred, per month? A. Well, to the best of my recollection, we would use about 220 or 240 kegs a month.

1360 *Samuel W. Stephens—Recross*

Q. At that mine? A. Yes, sir.

Q. How long did that continue? (Objection overruled.) A. Until I closed the mine down in September, 1906.

Q. Did the mine continue to do business after that? A. Well, it was leased to a party for about ninety days.

Q. Then after that it discontinued? A. Yes.

Recross examination by Mr. Button:

1361

Q. Then this company discontinued operations less than a year after this occurrence you have testified to? A. Well, yes, a little less than a year.

Q. What do you say your position was at the Mine No. 31—mine manager? A. I held the title as mine foreman, and at that mine I kept the pay-roll.

Q. Well, you were mine foreman? Did you have the same duties at these other three or four mines? A. Well, they gave me a little more work than they did the other fellows; they made me keep my own pay-roll and handle my own supplies.

1362

Q. Did the other mines have a mine manager also? A. Yes, sir; mine foreman.

Q. Did you yourself have anything to do with the contracting or purchasing of powder? A. No, sir; not on powder.

Q. What was the capacity of Mine 31? A. I got each day's run down (looking at a book). Some days 269,000 and 300,000 another.

Q. In a general way? A. About 300,000 of coal or 300 tons was about the average.

Q. How long had you been there as mine foreman when that began? A. I began in March or April, 1904; I ain't just sure which month it was.

Q. You had been there a little over a year when this strike occurred? A. Near a year and a half.

Q. You are a certified mine foreman? A. I have been examined by the examiners of the State of Missouri.

Q. At that time? A. Yes, sir.

Q. Are there a good many other companies in that vicinity operating coal mines or were there at that time? A. Manufacturers' Coal and Coke Company, Rombauer Coal Company, G. B. Havens & Company and the Midland Coal & Coke Company. I believe that was all the principal companies. There were one or two smaller companies. 1364

Q. From what you say, I judge the Rombauer Coal Company was using du Pont powder at that time in that vicinity? A. Yes.

Q. Can you state what these other companies were using? A. I am not positive, but I think practically all were using du Pont at that time.

Q. What powder was your company using when you first went there in 1904? A. We used some—from the time I went there until I went to 31 we had used some Austin powder and tried Excelsior powder, and I ain't sure but we had a small amount of powder that was manufactured down at Columbus, Kansas, or close to Columbus, Kansas. 1365

Q. When you say you began the use of Buckeye Powder first? A. I think along about the 1st of June.

Q. 1905? A. Yes; we got a few sample kegs; we got a small shipment of sample powder just previous to that.

Q. You had nothing to do with the making of the contract for that powder or for the purchase of it? A. No, sir.

Q. Then your recollection is that you used only Buckeye powder from May or June to September of that year? A. Yes; we had it on hand and I had disposed of it in small amounts; I didn't get all of

it sold out until about the 1st of January, 1906; it was along in September we discontinued the use of it at the mine.

Q. You say one day a Mr. Phillis came down there with a man you can't recollect; what was Mr. Phillips' first name, do you know? A. No; I don't remember; I always addressed him as Mr. Phillips.

Q. Do you know where he is now? A. I saw him a little over a year ago.

Q. Do you know where he is? A. No, I saw him
1367 just a short while back; but I didn't ask him his whereabouts.

Q. You stated that these men, he and another, came down there and you introduced them to the Pit Committee. What was his name? A. Mr. Hayes.

Q. What is Mr. Hayes' first name. A. Robert F.

Q. How many were there on the Pit Committee? A. Three.

Q. Do you recollect the other names? A. Jonathan Jackson, and S. P. Bisby.

Q. Do you know where they are? A. I know
1368 where Mr. Hayes is.

Q. Where? A. Sitting right over there.

Q. He is present? A. Yes, sir.

Q. You stated that you knew in some way beforehand that these gentlemen wished to talk to the Committee about Union Powder; where did you get that information? A. Mr. Grant called me on the 'phone—

Q. Please answer my question, I asked the name of the person from whom you got it, from Mr. Grant? A. Yes, sir.

Q. Then they had a meeting and you didn't attend it? A. No, sir.

Q. And then you had your strike? A. Yes.

Q. And then you got some du Pont powder and the men came back? A. Yes.

Q. You have had a good deal of experience, have you not, in the mining business? A. Yes, I have dug coal and worked in all capacities.

Q. And generally speaking, it is true that the miners have their own ideas and opinions as to the kind of powder that they want to use? A. Yes.

Q. And if they insist upon having a particular brand of powder they are very apt to get it before they are through? A. I have always found that they did get it.

Q. And it is also true all through this region 1370
that the wages made by miners depends upon the amount of coal they are able to get out? A. Yes.

Q. He is paid by the tonnage he gets out? A. The tonnage and yardage.

Q. It is also been your experience hasn't it, that the question of how much coal a miner can get out depends in some great measure upon the efficiency and quality of the powder he uses does it not? A. Yes, sir.

Q. Do you know where Mr. Joseph Rutherford is? Is he here? A. He will be here in a few minutes. 1371

Q. Is he around? A. Yes, sir.

Q. May I look at the records from which you refreshed your recollection as to the date of discontinuance? A. (Showing counsel the book) On hand April 30, at the close of business each week I made a record of the amount of powder on hand and the amount of coal produced, and you see here "on hand May 31." You will find I got those records right along, all the way through, and at the expiration of this book, I commenced over here in another book.

Q. Does this record end on September 1, 1905? A. You see there is a great deal of that work that interlapsed with this.

Q. Then this other book is the one in which they finally quit using it? A. Yes; I have a record of September 20th received from Novinger, powder—

Q. As I understand your recollection, you hadn't used du Pont at this mine until the event of this strike in September? A. Yes, we had been using du Pont powder exclusively, previous to that date; I mean, until we introduced Buckeye powder; previous to that time, we used du Pont powder.

1373 Q. I understand you to say it was Austin and Excelsior powder? A. We had tried out these powders, but we used du Pont.

Q. I think you inadvertently omitted the du Pont. When did you begin the du Pont powder? A. You asked me what powders other than du Pont we had been using, and I understood—

Q. However, I want to get at the facts; when did you begin using du Pont? A. The du Pont was used in the mine at the bottom. We had du Pont powder and used it; at various times we tried out these other brands, but the mine was opened at the

1374 bottom with du Pont powder.

Q. Then, isn't it true that you were using du Pont powder there when you went there? A. When I went there, we were using nothing but dynamite.

Q. You don't mean that you mined coal with dynamite? A. I shot coal, rock and everything away with dynamite when I first went on the mine, and we used du Pont powder when we made coal.

Q. Then du Pont powder was being used there before Buckeye powder? A. Yes, sir.

Q. And it was being used at the time you began using Buckeye powder. A. Yes, we used up du Pont after we received the Buckeye.

Q. Do you know how long they had been using du Pont powder this time? A. I opened this mine from the start, and the first shot of powder on the bottom with black powder was du Pont powder.

Q. Then, they used that powder from September, in 1904, up until— A. June, 1905, or July.

Q. Up until June or July, 1905? A. Yes, up until June or July, 1905, I used du Pont powder I had after we introduced Buckeye powder.

Q. What about the Austin and Excelsior powders? A. We had a small amount of them but they were not used.

Q. They were not definitely adopted? A. No, sir.

Q. But the du Pont was adopted? A. Yes, sir.

Q. Did the miners ever definitely adopt the Bucy- 1376
eye powder and demand it? A. Well, it was tried out and agreed to by the miners at that time and they seemed to be very well satisfied with it until——

Q. Who came down there on that business? A. Well, that was handled by the superintendent; he sent a sample down there and I introduced the powder and took the matter up with the miners at my mine and got them to use it and try it out and they tried it out and then they as a whole agreed to use it.

Q. Where did you get hold of it? A. I was in- 1377
structed by the superintendent to introduce Buckeye powder in the mines.

Q. Who was the superintendent? A. The general manager, Mr. Grant.

Q. Mr. Grant was spending his time there at that time, wasn't he? A. No, sir; Mr. Grant rarely ever was there more than an hour at a time, and not often more than a week.

Q. He was general manager? A. Yes, sir.

Q. And as such he had charge of the purchase of powder, did he not? A. Yes.

Q. And you received instructions from him? A. Yes.

Q. And where were his headquarters? A. At Novinger.

1378 *Samuel W. Stephens—Recross*

Q. And he was in constant communication with you? A. Yes, sir.

Q. By telephone? A. Yes.

Q. Did he ever have any other business or did he at that time have any other business except to attend to this mine? A. No, sir; I believe not.

Q. Was he there until the mine shut down? A. He lived there.

Q. He was there as long as you were there? A. Yes.

1379 Q. What date was that? A. I left in January, 1906, and then went back in October, 1907, until March, 1908. I was there five months since 1906.

Q. The reason Mr. Grant wanted Buckeye powder in there was that it was cheaper? A. The reason he wanted du Pont in there was, because it was cheaper than Buckeye. (Motion to strike out answer denied.)

Q. I am referring to the time when you changed from du Pont to Buckeye; was not that true? A. I don't know that it was, or I don't know that it

1380 was not.

Q. I see you have some Buckeye powder on hand here in your memorandum book as early as March 31, 1905, 133 kegs; was that for the purpose of trying it out? A. That was when we were first trying it out, I think.

Re-direct examination by Mr. Abbott:

Q. Mr. Stephens, you testified that you were using du Pont powder previous to the time when you began using Buckeye powder. State if you know whether or not your company entered into a contract with the Buckeye Powder Company? A. I don't know as to that.

Q. Now, you also stated that the miners were

satisfied and got good results from the Buckeye powder. Did you not so state in your cross examination? A. I don't know whether I made that assertion or not; I don't remember making it. However——

Q. You did state, however, that the miners seemed to be satisfied with the use of Buckeye powder? (Objection overruled.) A. Yes.

Q. Do you know anything about what the miners found with reference to the use of Buckeye powder and the amount of coal which it was capable of 1382
producing, as compared with du Pont powder, which you had been using? (Objection overruled.) A. On a comparative check of tonnage we produced more coal with Buckeye powder than we did with du Pont.

Q. Who did that comparative checking? A. I checked it.

Q. And you got better results from Buckeye powder than from du Pont powder? A. I did on the trial test.

Q. Referring to your previous testimony, both 1383
on direct and cross examination, concerning the date when you ceased the use of Buckeye powder, I will ask you to state whether or not you have any knowledge of a notice which was served upon the officials of the company to cease using the Buckeye powder and begin using du Pont powder; did you see any such notice as that? Have you any knowledge of any such notice? A. No, sir; I haven't.

Recross examination by Mr. Button:

Q. About this checking business, Mr. Stephens, how is that checking done? A. Well, the time that we started to introduce Buckeye powder, I, for the benefit of the company, started comparing tonnage;

I would have everybody clean up; have a man clean up all the coal and after he had no coal on hand, I would issue to him a can of Buckeye powder, and then figure on the tonnage that he would produce with a keg of Buckeye powder, with the tonnage he would produce with a keg of du Pont.

Q. With what he had produced some time previous? A. Yes, sir.

Q. How long a period did you keep those records?
1385 A. We had a man working in the same work, and he would use a keg of du Pont powder and would clean up every bit of coal they had; and then I would compare the tonnage.

Q. How long did that continue? A. I don't remember, but I think probably that it was about thirty days.

Q. Where did the tests occur? A. We were making tests continually with different miners in different parts of the shaft.

Q. You don't mean that you would shoot nothing but Buckeye powder in the whole plant? A.
1386 No; if a man wanted du Pont we would let him try it.

Q. Where are those records? A. The only records I have are blotters I took with me when I left the mines.

Q. But it was all a matter of record? A. I don't know how far the record went after I submitted it.

Q. You made a written record of it? A. Yes; I don't remember what they did with it.

Q. What was the difference in tonnage? A. It would vary from ten to fifteen per cent.; some men it wouldn't run as high as others.

Q. Consequently the miners that were using Buckeye powder got ten per cent. more wages than du Pont? A. Well, I don't know——

Q. It must be so, isn't it? A. Well——

Q. I am asking for the facts? A. Well, yes.

Q. And that is what would happen right along, isn't it? A. Yes, sir.

Q. They were getting ten or fifteen per cent. more wages? A. Yes, sir.

Q. What is the average wage of the miners? A. It all depends on the men.

Q. What is the average? A. Well, an American miner in that district runs about 62 to 65; an Italian will run about 40 to 45, and an Austrian will 1388
run 55 dollars in two weeks.

Q. Fifty-five dollars in two weeks? A. Yes, sir; more than Italians, and not as much as the English or American miners; two weeks' full work.

Re-direct examination by Mr. Abbott:

Q. Mr. Stephens, counsel for the defendant, has asked you several questions concerning the benefits which the miner would receive using one grade of powder over another, in his wages. Will you state why, if you know, what is the reason that under 1389
such circumstances the miner would change from a powder which produced him better results, over to one which did not produce the same or as good results in wages? (Objection overruled) A. The reasons that they withdrew from Buckeye back to du Pont powder was because Buckeye powder was represented to be a non-union powder to the miners.

Re-cross examination by Mr. Button:

Q. Was the Buckeye Powder Company a union shop? A. I don't know.

Q. Have you any doubt of the question of whether these miners in their union knew? A. I don't know whether they did or didn't.

Q. Don't you know they have special means of knowing? A. I wrote the constitution for that local union, and was secretary of it, and I know that the union that they took, they certainly didn't investigate the matter very strong, or they wouldn't be quite so radical as they was in this particular case. (Motion to strike this answer sustained).

Q. My question was, whether these miners' unions had facilities for learning or making investigations of these matters through their affiliations
1391 wth other unions? A. As secretary of that organization, previous to this time we didn't correspond with organizations as to local conditions of various different companies, unless an organzaton would correspond with the local union and notify them if it was not a local organization.

Q. Who asked you that question? A. I was just answering the first question.

Q. My question? A. Yes.

Q. I didn's ask you whether you corresponded with some other union, and as I understand you, that is what you were talking about? A. You asked me
1392 if I knew that these organizations was——

Q. You didn't seem to understand the question. The question is, are there not affiliations with these unions, such as would enable them to easily determine whether a particular factory is unionized or not. I didn't ask you whether you did determine it or not? A. Strong organized unions have a great many smaller unions——

Q. At the time you wrote this constitution you have mentioned, this contest between the Buckeye powder and du Pont powder had not begun? A. No, sir.

Q. Miners' unions are pretty strong, comparatively, are they not? A. They were not so strong at the start as at the time of this strike.

Q. They increased in strength? A. Yes, sir.

Q. And they are strong? A. At the time of this strike; yes, sir.

Q. And they were at the time of the strike? A. Yes, sir.

Q. They were connected with the State Federation? A. Yes.

Q. And the National? A. Yes, sir.

Q. And had ramifications all through the United States, even at the time you opened this mine? A. Yes. 1394

Q. You would consider that a pretty strong organization, wouldn't you, or would you not? A. Yes, sir.

Re-direct examination by Mr. Abbott:

Q. And they were pretty strong in the Novinger district at that time? A. Yes, sir, they were.

Deposition of JOHN KELLY, a witness produced 1395
on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Kelly, where do you reside? A. I reside at the present time at Laneville, Illinois.

Q. Where did you reside in 1905? A. At Novinger, Missouri.

Q. And 1906? A. Yes, sir.

Q. What business were you engaged in at that time? A. Mine foreman for the Great Northern Fuel Company, Mine No. 1.

Q. How many mines, if you know, did the Great Northern Fuel Company have at that time in opera-

tion? A. I believe at that time there must have been four; No. 1, 23, 31 and 21. That is my best recollection. I think they were all in operation at that time.

Q. What was your particular title and your particular duties at Mine No. 1? A. Mine foreman.

Q. What were your duties as mine foreman? A. Looking after the interests of the mine, and the day men and the general conditions about the mine.

Q. Was a part of your duties the purchase or
1397 use of supplies used by the men in the operations of the mines? A. No, sir; I didn't buy any supplies.

Q. Did you have any occasion during your performance of your duties as mine foreman at Mine No. 1 to use any black blasting powder? A. Yes, sir.

Q. What kind of blasting powder did you use? A. Well, sir, we used the Buckeye powder and the du Pont powder.

Q. When did you first begin the use of du Pont powder? A. Well, sir, we opened the mine with du Pont powder.

1398 Q. When was that? A. I think that was about '93, I think, when we started on that shaft.

Q. Do you mean 1903? A. Yes, sir; 1903, that's my best recollection; it might have been '04.

Q. How long did you continue to use du Pont powder? A. Well, sir, I couldn't tell, to be honest with you; I couldn't give the date.

Q. After you ceased using the du Pont powder, if you did cease, what powder did you begin to use? A. Well, sir, I used Buckeye for a while; we used Buckeye for it looked to me like four or five months. It appears that way to my recollection—but just how long we did use it——

Q. After you ceased the use of Buckeye powder, what powder did you begin to use? A. We had to use the du Pont then.

Q. What was the occasion, if you know, of your ceasing the use of Buckeye powder and beginning the use of du Pont powder? A. Yes, it was because of a strike in the mine.

Q. How did that strike occur? A. The strike occurred, that they wouldn't use any more Buckeye powder on account of not being union made powder.

Q. How did that information come to your attention? A. Through the Pit Committee at the mine. (Motion to strike denied.)

Q. What was the Pit Committee? What were 1400
its particular duties with reference to the mine operators? A. Well, sir, they looked after the interest of their men, of the union miners.

Q. And what authority did they have to speak for them? A. They had full authority. The Pit Committee has full authorities from the mine workers.

Q. Proceed to state further what you know about any information that came to you from the Pit Committee concerning the further use of Buckeye powder. (Objection sustained.)

Q. Do you know anything about any meeting 1401
held by the miners in your mine for the purpose of considering the question as to what powder they use? A. Yes, sir.

Q. State what you know about that. (Objection overruled.) A. Well, sir, they had a meeting to that effect; that's what brought up the trouble; they held their meeting in their hall, and they decided they wouldn't use any Buckeye powder on account of being a "scab" powder; that's all I understood about it.

Q. Did you have anything to do with any person connected with the Pit Committee in arranging to have a meeting called? A. No, sir; none whatever.

Q. Did any one approach you on the subject of holding a meeting? A. No, sir.

1402 *John Kelly—Direct*

Q. How did you receive information that the miners had decided not to use Buckeye powder? (Objection sustained.)

Q. How did you receive information that the miners had decided not to use Buckeye powder? A. By the Pit Committee.

Q. Was it in writing? A. It was verbal.

Q. The verbal information was given you direct? A. Yes, sir.

Q. By members of the Pit Committee? A. By
1403 members of the Pit Committee; that was their business.

Q. How much powder did you consume in your mines after you ceased using Buckeye Powder and began using du Pont powder? A. I don't think I used a keg; my men wouldn't use any more of it and I daresn't send it down.

Q. How much powder did you continue to use in your mining operations there? (Objection overruled.) A. Well——

Q. How much? A. You mean how much du Pont
1404 and Buckeye were used at the same time daily?

Q. No; what I want to know is, after you ceased using Buckeye powder you used du Pont powder? A. Yes, sir.

Q. How much du Pont powder did you use in continuing your mining operations? A. We went clear through until the company broke up.

Q. What did the company break up? A. About two weeks before Christmas, I think, two years ago —about the 25th day of December, two years ago.

Q. You can tell about how many kegs of powder you consumed per month in your mine after you ceased using Buckeye powder? (Objection overruled.) A. From 25 to 30 kegs a day.

Q. And you continued from that time until the company went out of business? A. Until the company went out of business.

Q. And that 30 kegs a day, as I understand you, was du Pont powder? A. Yes, sir; you daresn't use any other—just as well might make it plain—we daresn't use any other, or we would have a strike.

Cross examination by Mr. Button:

Q. This meeting—were you present at this meeting of the miners? A. No, sir. I daresn't no more go there than a rabbit.

Q. And consequently what you learned about it, 1406
somebody told you? A. Yes, sir; the Pit Committee.

Q. Did you use Austin and Excelsior powder in your particular mine? A. A few kegs, not worth speaking of.

Q. But mostly du Pont? A. Yes, sir.

Q. Then the principal powder you used up to some time in 1904 was du Pont? A. Yes, sir.

Q. Then they put in the Buckeye? A. Yes, sir.

Q. Do you know where that powder came from? A. No, sir; I don't.

Q. It came down there in ordinary kegs? A. Yes, sir. 1407

Q. With the union label on all of them? A. I declare if I could say.

Q. You would not be surprised to find out that was the fact? A. No; I wouldn't, because my recollection is not good. In handling works, you don't naturally pay any attention to what is coming. I couldn't say if there was a union label.

Q. You have seen Buckeye kegs with union labels on them? A. I may have, as the fellow says, just handled it and paid no particular attention to it.

Q. You were aware of the fact that those were union mills at that time? A. I couldn't say as to that, because I paid no attention.

Q. You couldn't say at the present time whether

you knew that fact in 1904 or 1905, or not? A. I don't know.

Q. Your recollection is not very clear on that subject? A. No; it is not.

Q. About when was it you started to use Buckeye powder in 1903? A. I couldn't be positive; I know when I opened the mine, and I think it was in 1903 or 1904.

Q. Do you mean you were using it first at the first opening of the mine, Buckeye? A. No, sir; I
1409 haven't heard of it; I hadn't heard tell of such a powder made.

Q. I may have misunderstood you. You didn't use it until when? A. Mr. Stephens' report was about the time the powder come. I couldn't tell no more than the man in the moon. I just remember the powder coming.

Q. It might have been a year or two later? A. It might have been. I know the powder come to the place.

Q. Did your mine continuously operate until two
1410 years—— A. Yes, sir.

Q. And you say you used thirty kegs a day; you don't mean 365 days in the year? A. No; we didn't work Sundays.

Q. Can you give it by the month? A. We would use in the neighborhood of 400 kegs a month.

Q. That is, in your one mine, No. 1? A. In No. 1, yes, sir; practically along that neighborhood. That is, in good running time. There are slack times and we didn't use powder in slack times.

Q. I suppose after this strike, when you got du Pont powder, that came down there all plastered up with union labels, didn't it? A. I can't say.

Q. Don't you know, as a matter of fact, there was never any union label on du Pont powder that went into that mine? A. There appears to me there

1411

wasn't; that's my opinion; I wouldn't be positive about it.

Re-direct examination by Mr. Abbott:

Q. Mr. Kelly, do you know whether there was a representative of the du Pont Powder Company at your mine about the time when this strike occurred? A. I remember some gentleman coming there.

Q. Did he come to see you? A. It appears to me as though he did. 1412

Q. Do you remember who he was? A. No, sir.

Q. Wouldn't you know him if you would see him? A. No. I just have a faint recollection of the trouble starting and that's all.

Re-cross examination by Mr. Button:

Q. You say you don't recollect whether any one did come or nt? A. I have a faint recollection of somebody coming there.

1413

Deposition of ROBERT F. HAYES, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Hayes, where do you live? A. I live at 351 Everett St., Kansas City, Missouri.

Q. Where were you living during the year 1905? A. Well, I'll tell you. It has been quite a while back, but still I remember I was living at Mine 31.

Q. What was your business at that time? A. Mining.

Q. As a practical miner? A. Yes, sir.

Q. You were a member of the mining association at that point? A. I was.

Q. What was it technically called? A. The United Mine Workers of America.

Q. What local? A. I disremember the number.

Q. What, if any, position did you hold in the association or with reference to the mines at that time? A. Well, I was a pit committee, a local representative of this mine.

1415 Q. You were a member of the pit committee? A. Yes, sir.

Q. Who were the other members of that committee? A. Well, as well as I remember, it was a fellow by the name of Jonathan Jackson, and Fred Bisby, I think it is.

Q. Do you know anything about a strike that took place at that mine in the fall of 1905? A. Well, I do, some. Of course, my recollection is a little hazy on that point; but I recollect a disturbance of some kind.

Q. Do you know how that came about? A. Well,

1416 I think it was relative to the powder question.

Q. What powder was being used in the mine previous to the strike if you know? A. Buckeye.

Q. Were you or were you not called upon by any person representing any other powder, just previous to that strike? A. Well, as well I remember, we were.

Q. Do you remember who the person was who called upon you at that time? A. No, I don't.

Q. You don't know his name? A. No, sir, I don't remember.

Q. Do you remember how he looked? A. No, sir; I don't think I remember the man; I don't think I would know the man.

Q. Did he or did he not, advise you where he

came from? A. Well, I believe he did, as well as I remember.

Q. Who did he say sent him? (Objection sustained).

Q. Do you remember how he looked? A. No, sir.

Q. What was it that he called for; what did he say to you? A. I don't remember, what the conversation was, only in regard to powder.

Q. What did he say to you in regard to powder? A. I can't just remember. 1418

Q. You say he said something to you in regard to powder; state your best recollection (Objection overruled) A. To my best recollection, it was something in substance to the effect that the powder we were using was not union made powder, and the powder he represented was; that's the best of my recollection.

Q. Did he ask you to do anything with reference to that question (Objection overruled)? A. I don't remember; I'll answer it in this way: That our sub-district representative brought it up to us and requested us to take action. 1419

Q. Who was he? A. John Phillips.

Q. What did Mr. Phillips say to you about it? A. I don't just remember what he did say.

Q. Did you take any steps in answer to the request that Mr. Phillips made of you? A. We did.

Q. What steps did you take? A. Posted a notice, and had a special meeting, and the consequence was, we had to strike to get the du Pont powder.

Q. Were you present at that meeting? A. Yes, sir.

Q. What was said or done at that meeting as near as you can recall, about the reason the meeting was called? (Objection sustained).

Q. State as nearly as you can recall what trans-

pired there and what was said and done? (Objection overruled).

Cross examination by Mr. Button:

Q. Which one of the three gentlemen was the chairman of your pit committee, do you remember? A. I don't remember.

Q. Do you remember whether you were or not? A. No, sir; I can't tell.

1421 Q. Are there records that would how? A. I don't think there is.

Q. You don't remember about that? A. That's just merely a matter of form.

Q. You had a pit committee, or various pit committees, attending to various things there, about all the time, didn't you? A. Yes, sir.

Q. And these committees are appointed for the time being in the meeting, and simply on motion, are they not?

Q. That is the way they are appointed, isn't it?

1422 A. The men are nominated and voted on.

Q. In open meeting? A. Yes.

Q. When anything comes up that they think ought to have the attention of the Committee, they name the Committee right there? A. They have a committee standing at every mine all the time; there is no such thing as a mine being without one.

Q. And what is that? A. The Pit Committee.

Q. You were elected this way? A. Yes, sir.

Q. How long did you serve on it? A. I don't remember.

Q. Probably a year or so? A. Probably six or eight months.

Q. How long had you been there? A. I have worked in that field seven years.

Q. At this mine? A. I don't remember how long.

Q. Had you come there recently? A. The mine

hadn't opened; it hadn't been operated so awful long.

Q. Were you there when it first opened? A. The entries were back, I should judge a hundred feet when I went there.

Q. How long have you been a miner? A. When I was thirteen years old.

Q. How long is that? A. I was born in 1880.

Q. That would be 1893? A. Something like that.

Q. Do you know where Mr. Jackson or Mr. Bisby are now? A. I do not. 1424

Q. All the talking and action of the Pit Committee takes place through the Chairman, doesn't it; he does the talking? A. Not generally; that is not generally so; at times.

Q. When you make an announcement to the mine operators, it is usually done through the chairman? A. Yes, sir.

Q. I take it from the way you answered these questions—this being a long time ago, your recollection is rather vague, isn't it? A. Well, yes; in some instances; I don't just recall things like—that is like I could at an earlier date. 1425

Q. And it comes to this, doesn't it, that you recollect there was some disturbance between these two powders, and you had a meeting and a strike? A. Yes.

Q. How many saloons are there around there where they had this beer—

Mr. Button: This relates to the other matter.

The Court: I know, but you examined him.

Mr. Button: I don't mind it, I had just as soon read it. (Reading) Q. How many saloons were there around there where they had this beer? A. None, now.

Q. How many were there at that time? A. I don't remember.

Q. It was more than one? A. Yes.

Q. This meeting at the saloon wasn't a formal meeting? A. It wasn't at the saloon.

Q. Where was it? A. About a quarter, or half a quarter out of town, about three blocks.

Q. Was this a formal meeting at that local? A. No, sir.

1427 Q. Some of the miners gathered there and had a keg or two of beer? A. The men working for the Great Northern Fuel Company implicated in this.

Q. They were not all there? A. I don't suppose so.

Q. It is not an unusual thing for miners to drink beer? A. Not any more than anbody else.

Q. Do you remember about union labels being on the Buckeye Powder Company's kegs? A. I don't know positive.

Q. Do you remember whether there was any on the du Pont kegs? A. I don't remember.

1428 Q. You have talked this matter over recently, have you not? A. Not very much.

Q. Who have you talked with? A. With the man that subpœnaed me here.

Q. Mr. Abbott? A. No, sir.

Q. Who? A. Mr. Stephens.

Q. Did he serve a subpoena on you? A. No.

Q. You talked it over with him? A. Not very much.

Q. You talked over the points involved, I suppose? A. A few.

Q. What are you doing now? A. I am not doing anything at the present time; my wife is sick now.

Q. Oh, I don't want to know what you are doing at this particular time, but whether you are working for any company at the present time? A. No, sir.

Q. What is your occupation? A. I am a plasterer's laborer.

Q. When did you last give up mining? A. The last mining I did was a little over two years ago.

Deposition of JOSEPH F. RUTHERFORD, a witness produced on behalf of the Plaintiff, being duly sworn, read as follows:

1430

Direct examination by Mr. Abbott:

Q. Where do you live? A. 1934 Park Avenue, Kansas City, Kansas.

Q. Where did you live during the years 1905 and 1906? A. At Novinger, Missouri.

Q. What business were you engaged in at that time, 1905 and 1906? A . In 1905 and 1906 I was digging coal and check weightman, I believe.

Q. By whom were you employed in that capacity? A. By the Great Northern Fuel Company as miner and by the United Mine Workers as check weigh- 1431
man.

Q. What were your duties as check weighman in representing the United Mine Workers? A. I stood between the miners and operators, trying to see that the miners had justice in the weights of coal.

Q. And what did you do to ascertain that fact of how much coal a mined produced? A. I watched the beam on the scales to see the coal was right, and kept tab on the sheets on each car of coal, and computed it after the end of the day's run.

Q. Did you have anything to do with the use of black blasting powder in that time? A. Yes, sir.

Q. What powder was being used in the spring of

1903? A. We were using the du Pont, to the best of my recollection at that time.

Q. And did you continue to use du Pont? A. Well, no; we used du Pont part of that season.

Q. When did you cease to use the du Pont? A. I can't tell you the exact date.

Q. What powder did you use after you ceased using du Pont? A. There was some sent there for a sample, if I remember right; I don't remember the name of it; and then we had some Buckeye,,

1433 two different grades of that, I believe.

Q. When did you begin using Buckeye Powder? A. I couldn't tell you the exact date.

Q. How long did you continue to use Buckeye Powder? A. Well, that would be hard for me to tell positively, two months, maybe three, and it may have been longer.

Q. Did you hold any other office, or did you sustain any other relation to the miners' union except check weighman? A. Yes, I was recording secretary.

1434 Q. Of what? A. Of the local.

Q. What was that local at that time? A. I don't remember whether we had a number or not; the Great Northern local I couldn't tell.

Q. I will ask you to state whether or not you recall any question that arose between the operators of the mine and the miners' union which you represented, regarding the use of Buckeye powder? A. Yes, a number of discussions.

Q. You can? A. Yes.

Q. State what it was. A. There was a discussion about the powder being the best powders and our contract called for the best of powder, and some of them claimed that the du Pont powder was better powder than the Buckeye powder, and I know my experience was the other way. I kept tab of the

coal produced, and I was in favor of Buckeye powder; I remember that.

Q. What happened after this discussion you related? A. Some of the boys took it up and they wanted me to post a notice for a special meeting.

Q. Yes. A. And I had to post a notice at the mines for a special meeting.

Q. When? I don't know the exact date.

Q. I will ask you if you had conversation with anyone who purported himself to represent the du Pont Powder Company, with reference to the use 1436
of du Pont powder? (Objection sustained.)

Q. Do you know who that man was? Do you know his name? A. Well, I don't know whether I could say what his name was or not; I don't remember his name.

Q. Do you know him—do you think you would know him if you saw him? A. I think I would.

Q. Do you see him in this room? A. I think I do.

Q. What gentleman is it? A. The gentleman over there (pointing in the direction of Mr. Spicer.) 1437

Q. Mr. Spicer? A. I think he is the gentleman I saw with Mr. Phillips, when discussing the question, or one something like him.

Q. Who was Mr. Phillips? A. He was our sub-vice-president, I think.

Q. What was said to you by Mr. Spicer, the gentleman who you have identified at that time, with regard to the use of Buckeye powder? A. The main talk I had with Mr. Phillips and Mr. Spicer, to the best of my recollection, was, not in regard to the quality of the powder——

Q. State the conversation as near as you can recall. A. They both represented to me or made me believe——

Mr. Button (Interrupting): That is objected to as a conclusion.

Q. State as near as you can what they said? A. (Continuing) That the Buckeye Powder people was not authorized, and it wasn't a union made powder.

Q. And what did he say with reference to the du Pont powder, if anything, as to whether it was union or non-union? A. That is, was union pow-

1439 der; that it was organized or reorganized.

Q. What, if any, effect did that have upon your subsequent conduct in relation to the use of Buckeye powder? A. Just as much as it would on any other subject; I would be very favorable to organized labor; if the results were anywhere near equal.

Q. Was or was not a meeting held by the miners to consider that question of whether they would use, or continue to use, Buckeye powder, or adopt du Pont powder? A., Yes, sir.

1440 Q. Were you or were you not present at that meeting? A. Yes, sir.

Q. Did you or did you not participate in the discussion of the matter? A. To the best of my recollection, I did.

Q. What position did you take at that meeting with reference to the continued use of Buckeye powder? (Objection sustained.)

Q. After this meeting was held, did you as recording secretary of that union, make any record, or any notice concerning the result of that meeting? A. To the best of my recollection, I did; for I don't think I ever neglected to do my duty.

Q. What steps would you have taken in notifying the operator? A. I would address a circular letter to Mr. I. B. Grant, the superintendent, stating the results of the meeting.

Q. As I understand it, to the best of your recollection, you did that? A. Yes, sir.

Q. Do you know where that notice is that you served upon the Great Northern Fuel Company's officials at that time? A. No, I don't; I presume they have it filed with the papers.

By Mr. Button:

Q. Who has? A. The Great Northern, I suppose.

1442

By Mr. Abbott:

Q. It has never been received back by you? A. No, sir.

Q. I will show you a paper writing and ask you to examine the same and state whether or not you recognize the contents thereof? A. Yes, sir.

Q. After this notice was served upon Mr. Grant, what, if any action was taken by the operators with regard to the use of Buckeye powder?

1443

Mr. Button: That is objected to on the ground it has not been proven what the contents of such notice was.

Mr. Abbott: I will state that we will endeavor to identify the writing asking this witness at this time to save recalling him.

(Reading): (Stenographer repeats the question).

A. Why, it was discontinued; we got du Pont powder in the place of it.

Q. Do you know how long they continued the use of du Pont powder? A. No, I don't.

Q. How long were you employed at the mine after that circumstance? A. Possibly a year.

Q. Did or did not they continue the use of du

Pont powder during the time you were there? A. Yes, sir.

Q. And did they use any more Buckeye powder during that period? A. Not that I know of.

Q. What was the situation in the Novinger Field during this time, that is during the year 1905 with regard to the union or non-union sentiment?

Cross examination by Mr. Button:

1445 Q. When did you first come into the employ of the Great Northern Fuel Company? A. Well, I couldn't tell you the exact date of that; I worked there about two years and a half, I guess.

Q. When did this change of powder take place? A. In 1905, I believe.

Q. What time of the year? A. Along in the summer months, about August, I guess or September, or somewhere along there.

Q. I understood you to say a while ago, you were not certain. Are you certain now? A. No, sir.

Q. You are not certain? A. No, sir; not the
1446 exact date.

Q. Are you certain of the year? A. Of the year, yes.

Q. You are sure it was 1905? A. 1905.

Q. Can you tell about how long you had been at that mine at that time; how long previously? A. At Mine 31?

Q. No; I mean working for this company? A. They have three or four mines.

Q. They are all around there? A. Yes, sir; I worked at No. 1 and No. 31.

Q. How long have you been working at one of those mines of the Great Northern? A. Possibly a year.

Q. Is that the best you can do? Aren't you sure

whether it was a year or two years? A. It might have been over a year—I couldn't tell.

Q. Likewise you couldn't tell the exact year this powder trouble occurred? A. Yes, if I refresh my memory.

Q. When did your memory get refreshed? A. When I would refer to my note book I got.

Q. Have you done so? A. A little, yes.

Q. When? A. A month or six weeks ago.

Q. How did you happen to do that? A. Mr. Abbott was over to see me and asked me what I 1448
knew about this particular case, and when I went home, I got to looking up my own statement on the amount of coal dug and I referred to the books.

Q. Consequently you are certain that it was in 1905? A. Pretty positive of it, yes.

Q. What powder have you been using before Buckeye? A. Before we used the Buckeye?

Q. Yes. A. It was du Pont.

Q. What other powder? A. That is the only other powder I used at that mine.

Q. You didn't have charge of all four mines? A. 1449
No, sir; I didn't have charge of any of them.

Q. What is the name of your position? A. Check weighman.

Q. How long have you been a check weighman? A. I guess I served in that capacity five or six months.

Q. In 1905? A. I wouldn't say all together in 1905; I was check weighman——

Q. Well, five or six months then before the powder trouble do you say they struck? A. Possibly three months, at Mine 31.

Q. Had you been a check weigher before those months? A. Yes, sir.

Q. Where? A. At Mine No. 1.

Q. How long were you a check weigher there?

A. I believe I was only appointed temporary there during the man's absence.

Q. That was your first experience? A. Yes, sir.

Q. A temporary appointment at one of the mines? A. Yes, sir.

Q. And that was at Mine 1? A. Yes, sir.

Q. Prior to a check weigher, what were you? A. I dug coal and worked at the carpenter's trade.

Q. How long have you been digging coal? A. Possibly a year and a half or two years.

1451 Q. What mine did you dig coal in? A. My first experience was in a drift at Des Moines, Iowa.

Q. What mine was that, what company? A. Just a little drift, and I had it leased myself.

Q. You were the operator? A. Yes, sir; there were two miners there.

Q. What year was that? A. That must have been about 1897 or 1898.

Q. What powder did you use? A. Didn't use any powder.

Q. Was there any black powder used in that

1452 operation? A. No, sir.

Q. What was the next experience you had? A. At Mine 31, the Great Northern.

Q. Did you dig coal there or were you check weighman? A. Both.

Q. Then you never dug coal except for a limited period? A. About three or four years.

Q. At Mine 31? A. No, at this drift.

Q. Including when you were operating that drift up there? A. Yes, sir.

Q. Most of your time at the Great Northern Fuel Company's mine was a check weigher, during which time you didn't dig coal, is that correct? A. No, I did not; I think I dug coal there more than I was check weigher.

Q. Then, you must have been—your employment

must have begun about the beginning of 1904 with that company; is that right? A. Yes; in 1903 I worked there.

Q. During that period, what powder did you use? A. Just the two kinds of powder.

Q. Which? A. The du Pont and the Buckeye.

Q. Did you use them both? A. Yes, sir.

Q. When did you begin the use of Buckeye? A. I used Buckeye in mine 31 along about May or June.

Q. Which year? A. 1905. 1454

Q. You had been using du Pont powder all the time previous to that date? A. Yes, sir.

Q. Did you use any Austin? A. I don't believe I used any of that Austin powder.

Q. Excelsior? A. I never heard tell of that.

Q. What business are you in now? A. I have been in the position of carpenter foreman for the water plant on the Kansas side.

Q. When did you stop mining? A. I stopped mining when I left the Great Northern Fuel Company, and have not mined any since.

Q. When was that? A. It was in 1907, I think. 1455

Q. Now, you have testified that when this powder matter came up, you were requested by the miners to put up a notice for a special reason, and they were discussing the merits of the respective powders; that is what you heard them discussing at the time they asked you to call this meeting? A. What?

Q. The miners asked you to call a special meeting of the union? A. Yes, sir.

Q. You testified a while ago that when they asked you that they were discussing the relative merits of the Buckeye and du Pont powder; that's right, isn't it? A. Yes.

Q. Then later, was it, that you had this conver-

sation with Mr. Spicer and Mr. Phillips? A. I wouldn't be sure whether it was later or at this particular time.

Q. In regard to this letter that you have identified, did you ever see that particular paper before that was shown you a few minutes ago? A. No, sir; I don't think I ever saw that paper before, that I know of.

Q. You, at that time, in 1905, when this discussion about du Pont and Buckeye powder was being
1457 had, were very much in favor of union labor, were you not? A. Yes, sir.

Q. And you still are? A. Yes, sir.

Q. So much so that you would have been willing at that time to take a very strong position in favor of union goods. A. Yes.

Q. And you did take that position, you testified? A. Yes.

Q. Weren't you considerably disappointed when this du Pont powder came down there and didn't have the shop label on it?

1458 Q. When the du Pont Powder Company shipped this powder down there, did it have the union label on it? A. I couldn't say.

Q. That was, so far as you now understand it, the very point of this powder discussion; that the du Pont would have the union label on it? A. Yes.

Q. And yet you say you didn't notice? A. Yes.

Q. You didn't take the trouble to look? A. No; possibly at that time I would have known whether it had or not, but I coudn't say positively whether it did or not.

Q. Well, if it hadn't it on, you would have made objection then, wouldn't you? A. I believe I would.

Q. As weigher, did you have to look at the powder to handle it? A. Yes; sometimes they would call for coarse and fine.

Q. Don't you remember that the Buckeye kegs

had the union label on them? A. To the best of my recollection, some of them had labels on and some of them didn't.

Q. You know enught about organized labor to know that such labels would not be there unless it was made in a union factory? A. On the contrary; I know different.

Q. They do that sometimes? A. Yes.

Q. You were convinced that that was what the Buckeye Company had done? A. No, sir.

Q. You didn't investigate it? A. No, sir. 1460

Re-cross examination by Mr. Abbott:

Q. And you acted accordingly? A. Yes.

Q. I show you a paper writing which I showed you awhile ago, marked for identification P 167 and ask you to look at that paper and state whether or not you can from it refresh your recollection as to the date when the Great Northern Fuel Company ceased to use Buckeye powder? A. No, I couldn't do that.

1461

Re-cross examination by Mr. Button:

Q. I think you stated before, that you do not recollect Mr. Spicer discussing this union business with you, didn't you state that on your direct examination? A. No, sir.

Q. You didn't state that? A. No, sir.

Q. I though you stated it was Mr. Phillips that did the talking? A. Mr. Spicer might not have said anything to me, but Mr. Phillips was discussing it with me and we were discussing it together.

Q. All you are sure of, you remember that either of them discussed this union business with you? A. Yes, sir.

1462 *William S. McCaull—Direct*

Deposition of WILLIAM S. MCCAULL, a witness produced on behalf of the plaintiff, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. McCaull, you reside in Kansas City, I believe? A. I do.

Q. What is your business at the present time? A. Attorney at law, president of the McCall-Dryer Tie Company.

1463 Q. Did you ever have anything to do with the company known as the Great Northern Fuel Company? A. I organized it and was president of it until about the end of 1905.

Q. Where did that company operate; what was its business and where did it operate? A. In Adair County, Missouri, and Coalfield.

Q. At what point? A. Novinger.

Q. It was a local mine? A. Yes, sir.

Q. How many mines did the company own and control at Novinger? A. Five.

Q. Can you recall the names and designations
1464 of the mines? A. No. 1, 21, 22, 23 and 31. 22 was never operated; it was simply opened up.

Q. Did you yourself, have anything to do with the operations and oversight of those mines? A. Only as president of the company. I. B. Grant, was the superintendent in charge of the operation and construction.

Q. Did you have anything to do with the purchase, or contracting for the purchase of supplies in that mine? A. It was my duty, except as I delegated it to Mr. Grant, to do certain parts of it.

Q. Did you have anything to do with black blasting powder? A. I did.

Q. What powder did you use in your mining operations previous to the spring of 1905? A. The Excelsior, du Pont, Austin and Buckeye.

Q. When did you first begin the use of Buckeye powder? A. During some time in 1905; I can't tell the exact date.

Q. Can you approximate the date? A. Along about May or June, I think. Our Austin contract—

Q. Immediately preceding the use of Buckeye powder, what powder were you using? A. Austin for a couple of months prior, and du Pont prior to that, with a few kegs of Excelsior that we started in with in sinking the first shaft.

1466

Q. At the time you began using Buckeye powder you were using Austin powder? A. Austin powder.

Q. What caused you to change from Austin powder to Buckeye powder? A. The price; and I expect the men requested it, but I am not certain as to that; it was a question of price, the Austin was costing us $1.45 a keg, I think, and it would pay to change. I thought it was too much.

Q. Did you simply buy Buckeye powder in the open market, or did you make a contract with them? A. A contract.

1467

Q. How long did you continue to use Buckeye powder under that contract? A. From the time we commenced, which I think was along about May or June, or July, until about the 15th of October, or thereabouts.

Q. What caused you to stop using Buckeye powder about the 15th of October, 1905? A. The final cause was, the miners refused to use anything but du Pont, and the principal cause was, we wanted cheaper powder and the du Pont was ten cents a keg cheaper than we were paying the Buckeye and we wanted to get away from that contract.

Q. From whom did you receive any offer of prices of du Pont powder while you were using Buckeye powder; who made the prices to you? A. I believe the first price was made by Mr. Spicer.

Q. The gentleman who is present in that room? A. The gentleman who is present in the room; I had found out what Rombauer was paying before meeting him.

Q. Who was he? A. The president of the Rommauer Coal Company in the same field.

Q. After you received these offers from Mr. Spicer of better prices for du Pont powder, what steps, if any, did you take to call the matter to the attention of the Buckeye Powder Company? A. I believe I
1469 called it to the attention of the Buckeye before I had an interview with Mr. Spicer. I found what our competitors were getting it for, and I put it up to the Buckeye to see if they would lower their prices.

By Mr. Button:

Q. That was in writing? A. Yes, sir. (Objection overruled). A. (Continued) I failed to get any response from that and I told Mr. Grant to ar-
1470 range to get hold of the du Pont people and it was then I had my interview with Mr. Spicer, in the office at Kansas City.

Q. State what occurred at the interview with Mr. Spicer in Kansas City? A. I told him we wanted du Pont at the same price, and asked him if he knew of any way that we could get the miners to ask for du Pont powder, and if he could, I would be very glad to sign a contract; that I wanted to get the ten cents a keg refund.

Q. What suggestion did he make? A. He said he would see what could be done, and he would go to Novinger to see what could be done, and I told him I would order as soon as I felt safe that the Buckeye Powder Company would not sue us for breach of contract.

Q. What happened after that, so far as Mr. Spicer was concerned? A. Shortly after that Mr. Grant sent me a letter from Mr. Rutherford, secretary of the Local Union——

Q. Sent you a letter signed by Mr. Rutherford? A. Yes, sir.

Q. Have you that letter? A. No.

Q. Do you know where it is? A. I presume it went to the furnace; at the time I was discharged by the Federal Court as receiver of Great Northern Fuel Company, all the papers not pertaining to live 1472
claims and matters of that sort, were handed to the janitor to go to the furnace. In that package was a package of papers, four or five or six inches high marked "powder matters," and I presume it was in that pile.

Q. You made a search? A. Yes, sir; I made a search all through the letters, and can't find any trace of it.

Q. I show you Plaintiff's Identification 167, and ask you to examine the same and state whether or not such paper has any reference to the document 1473
that you have just testified to?

Mr. Button: That is objected to; we object to the witness stating what the paper has reference to, as the paper will show for itself.

Q. I ask you to state whether or not you recall the subject matter of the document which you now have in your hand? A. I do.

Q. When did you first see that subject matter? A. When Mr. Grant transmitted Mr. Rutherford's letter to him. I might say that Mr. Rutherford and I were old room-mates for a good many years, and I am familiar with his handwriting.

Q. You recognize this document as being a correct copy of the notice which was served upon you at that time by Mr. Rutherford? (Objection overruled.) A. I wouldn't say it was a correct copy; I can't remember word for word; I remember though at that time I received that I wrote the Buckeye people and enclosed a copy of Mr. Rutherford's notice. As near as I can remember, this is the sum and substance of what I sent to them.

1475 *By Mr. Button:*

Q. You mean to say it is the document you sent to them? A. I think that it is not, because I don't recognize that typewriter and the form of the letter; the machine I was using at that time was a little smaller type than that.

By Mr. Abbott:

Q. At the time you sent this paper to the Buckeye Powder Company, do you remember to whom
1476 you addressed it? A. I think to Mr. Burrows, St. Louis.

Q. Did you address him in writing? A. Yes.

Q. Have you got the original letter you sent to him at that time? A. I have not. Our office copy, carbon copy.

Q. Have you the carbon copy? A. Yes. That was destroyed.

Q. Now, Mr. McCaull, after you had this conversation with Mr. Spicer, when did you next see him? A. In St. Louis some time a little later.

Q. Did you have any conversation with him at that time? A. Yes; I signed their contract or order for some du Pont powder.

Q. You signed a contract? A. Or order.

Q. Was any reference made in that conversation A. Yes, sir.

to the cessation of the use of Buckeye powder? A. Well, something was said. I remarked to him he done a good job in getting us away from that contract; saving us ten cents a keg; and one of my last acts as president was, to either renew the contract or sign an additional order for du Pont powder, so as to hold that contract during the balance of the time.

Q. You were on friendly terms with Mr. Spicer? A. Yes.

Q. And are yet? A. Yes, he did me a good turn 1478
and I would do him one if I could.

Q. Was there any conversation had between you as to what steps Mr. Spicer took to bring about the change? (Objection overruled.) A. I couldn't repeat any exact words that were said, only in a general way that he did a good job and knew how to reach the business.

Q. Do you know anything that was done at Novinger by Mr. Spicer? A. No, sir; the results were what we were after, and I didn't care how he got them.

1479

Q. Did you have any discussion with Mr. Spicer at any time regarding the fact that the Buckeye powder was a union powder? A. I did, the first time I met him in my office.

Q. What was said at that time? (Objection overruled.) A. When we were dicussing how to get the miners to ask for a change of powder, so that we could break our contract, our Buckeye contract, the question came up about the union powder, and I stated to Mr. Spicer that I understood Buckeye was a union and du Pont was a non-union powder and it would be up to him to get hold of the boys at the mine and show them that the Buckeye had since become a non-union powder, and that du Pont was operating some union mills, and he said that

could be easily fixed, and he would explain it to the boys that du Pont could furnish them with union made powder, and I told him if he couldn't furnish union made powder he might persuade the Pit Committee that the Tinners' Union label on the keg might be sufficient, and he said he would see what he could do.

Q. At the time when the notice was served on you to change from Buckeye powder to du Pont powder, what were the conditions, so far as Buck-
1481 eye powder that you had on hand was concerned? (Objection overruled.) A. When we received the letter sent by Mr. Rutherford as recording secretary of the local union, we had part of a car of Buckeye powder on hand. I communicated with Mr. Grant to get the boys to use up what we had, but I understand the boys refused to do that, and that they had to job it out to some of the firm's mines.

Q. Mr. Spicer got quicker action than you contemplated? A. I didn't expect the miners to call a strike; I expected them to ask as to change, and
1482 it took me by surprise when they struck, and no du Pont powder in sight, and I couldn't get it under a week, and that they would not use up the other powder.

Q. Did you take any steps to secure additional time; did you make any effort to get time within which to comply with the order? A. I believe I instructed Mr. Grant to call on the district officers or state officers and take the matter up about out being under contract with the Buckeye Powder Company, and get the miners to use it; that they were not justified to compel us to change the powder until we used up the powder on him.

Q. What was the result? A. I couldn't say; my recollection is, they refused to use it, and it was

jobbed out to small users, although it is possible they might have used some of it.

Q. How many kegs of powder did you consume, or did the Great Northern Fuel Company consume in its various mines at Novinger, at the time when it changed from Buckeye powder to du Pont powder, and how many kegs did you conttinue to use down to 1908? (Objection overruled.) A. Mine No. 1 was the only mine being run full force, that is, it was what we call the developed mine; the others were in the course of development. All the 1484 mines together were using, during the year 1905, a car load every second month, with 21, 23 and 31 developed to a capacity from 150 to 300 tons a day, they should have all used together at least one car load every month. But when I left them, the three latter mines were not fully developed.

Q. In other words, about how many kegs per year did all your mines consume during all the time you were with them after they began to use du Pont powder? A. A car load every second month, six car loads a year, barring strikes. 1485

Cross examination by Mr. Button:

Q. How long were you in the management or the presidency of this company, Mr. McCall? A. It was organized in January, 1903, and I sold out, I think it was in December, 1905. Then the property was run by others, until I was appointed Receiver by the Federal Court in March, 1911. I closed up the Receivership about March, 1913.

Q. And you are a lawyer by profession? A. Yes, sir.

Q. You practised law prior to going into this business? A. Yes, sir.

Q. And still are practising law in Kansas City?

1486 Q. How long does this Receivership last? A. The company failed to meet its payroll the 26th of November, 1910; I was appointed Receiver in the United States Court, Judge Macpherson, I think it was the 6th or 7th of March, 1911. From November until March I had the power of attorney from the president to try and adjust their affairs as attorney representing the bonholders to try and adjust it with the——

1487 Q. Did you negotiate a contract for the purchase of powder yourself? A. Judge McPherson named me as Receiver.

Q. Did you negotiate a contract for the purchase of Buckeye powder yourself? A. My recollection is I did; I think Grant got hold of them first.

Q. Do you know where that contract is? A. I think it is in the furnace.

Q. Was it executed in duplicate? A. I think it was.

Q. And, undoubtedly, the Buckeye Powder Company had a copy? A. I think so.

1488 Q. Do you recollect the date that contract bore? A. No; but I think it was some time a few months after January, 1905.

Q. Was it a contract for a year? A. Yes, sir.

Q. A few months after January, 1905? A. Yes.

Q. What was that date? A. The date of the Austin.

Q. And you say it was for a year? A. Yes; my recollection is the Austin contract was dated the 20th of January, 1905, and finally executed in April, 1905, and I think we probably used two or three cars of their powder, and then one of Buckeye, and my recollection is, that the Buckeye was a yearly contract.

Q. As a matter of fact, you took powder under that contract only for two or three months? A. Yes.

Q. When was it that you found out about this contract with Rombauer? A. I judge it was in July or August, possibly September; I think it was in August.

Q. Did you see the contract? A. No, but I got it from the old Major himself.

Q. He told you? A. Yes.

Q. You don't whether this information was correct, from your personal knowledge? A. No, sir.

Q. What price did he tell you he had? A. $1.05.

Q. You were paying the Buckeye $1.15? A. Yes. 1490

Q. Up to that time, I suppose you hadn't taken up with Mr. Spicer, or anybody with the du Pont Company, the question of buying powder? A. If we organized the company in 1903, I took it up with the du Ponts and they turned me down, unless I would tell them who the stockholders were, and that I couldn't do, because J. S. Keefer, Vice-President of the American Steel and Wire Company—

Q. Speaking of the period of the existence of this Buckeye contract, you have it down to the point where you discovered from Rombauer that he had a cheaper price when you were getting it from the 1491
Buckeye. My question was, whether up to that time you had any negotiations with the du Pont Company about changing their powder? A. Not until that time.

Q. Then you took it up with the Buckeye people, and that wasn't satisfactory to you, and then did you send for Mr. Spicer? A. I think I had Grant get word to him some way, I wanted to see him.

Q. And he did see you? A. Yes, sir.

Q. And you told him you had written a contract with the Buckeye Powder Company, but because the du Pont Powder Company was selling powder ten cents cheaper, you desired to work up some situation under which you could break that contract? A. That's the thing in a nut shell.

Q. You understood there was not any justification in the situation; you understood that it was a fictitious situation that was to be created? A. Yes —no, sir.

Q. Didn't you understand that the Buckeye Company had ceased to be a union factory? A. No, I didn't know, I didn't care.

Q. You suggested that it would be necessary to make the miners believe a fact which you knew was not true? A. I didn't know whether they were
1493 union or not; they claimed they were union, and they refused to reduce their price. I felt justified in getting away from them if I could.

Q. It was anything to create a situation that would save you ten cents a keg, was it? A. That's about it.

Q. That was the whole situation? A. I guess that's right.

Q. And when you found you had on hand a little more powder of the Buckeye than you expected, you were rather sore that you had done it? A. We didn't want it done so quick; I didn't think the
1494 union moved so fast.

Q. In fact, this arrangement, such as it was, was entirely initiated by you, and would not have been entered into unless you had started it, according to your own story? A. No, I can't say as to that.

Q. The du Pont Powder Company had not, up to that time, tried to see you on the subject? A. I think they have been at Novinger and seen Grant, and I told them I wanted to see them at Kansas City.

Q. How much powder did you have on hand, Buckeye Powder, at that time? A. I think upwards of a car.

Q. It amounted to the proposition of starting a strike in your own mine? A. That's what it resulted in, I didn't expect it.

Q. But that's what it amounted to? A. Yes.

Q. You knew, if you didn't do that right away, it would result in a strike? A. They got right out for the strike.

Q. How long did you know Mr. Phillips? A. I never met him unless it was on pay day some time, I don't remember him.

Q. You were never interested in the Buckeye Powder Company? A. No, sir.

Q. Do you know Mr. Waddell? A. Only through correspondence. 1496

Q. You never met him? A. I don't think I ever did.

Q. Who did you negotiate your Buckeye contract with? A. I think all correspondence was addressed to E. C. Burroughs, who was at the mine a few times; I never met him; I only went to the mine once a month or twice in two months.

Q. Did you sign a du Pont contract? A. I know I signed some paper with Mr. Spicer in St. Louis; I can't say whether it was a contract or an order. I naturally would sign it, unless in my absence Mr. 1497
Underwood or Mr. Hill would sign it, or Mr. Grant, if he was there.

Q. Can you give the date of this first conversation with Mr. Spicer? A. No.

Q. You can not? A. No.

Q. Can you give the month? A. Possibly in September of that year, or October, I wouldn't be certain which, some time prior to this strike, maybe one week or two weeks; it might possibly be, that by going over the books I might get some data that would refresh my memory; I can tell when I met him in St. Louis, because I looked up my diary yesterday as to that.

Q. Can you identify the date of the second conversation with Mr. Spicer? A. No.

1498 Q. Was anybody else present at either of them? A. Mr. Underwood might have been present, and Miss Drake, the stenographer.

Re-direct examination by Mr. Abbott:

Q. Did you sign a contract with the du Pont Powder Company, then, after you changed from Buckeye powder? A. I either signed a contract or
1499 an order for so many cars of powder; I couldn't say which it was.

Deposition of J. A. ROBERTS, a witness called for the Plaintiff, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Roberts, where do you reside at the present time? A. 54 Madison Avenue, Chicago, Illinois.

1500 Q. Give you full name, please? A. J. A. Roberts.

Q. I will ask you if at any time you were connected with the concern known as the Weaver Coal and Coke Co.? A. Afterwards the Manufacturers' Fuel Company?

Q. Where was that firm doing business at the time you were connected with it? A. Here in the Marquette Building, Chicago.

Q. And when was it that you were connected with it? A. 1903 and part of 1904.

Q. Now, what was your relation to the company at that time? A. I was purchasing agent.

Q. Did you know the plaintiff in this case, the Buckeye Powder Company? A. I knew of them, their representative, Mr. Miller.

Q. Did you have any business communications with them? A. I had correspondence with them from time to time.

Q. I show you a paper and ask you to state if you have ever seen that document before? A. That is my signature and I take it that I wrote it.

Q. And the letterheads? A. That is the letterhead we used at that time.

Q. This is a letter that was written by you on January 26, 1904? A. Yes.

1502

Mr. Abbott: I offer this letter in evidence.

Mr. Katzenbach: The letter is objected to on the ground that it is a communication between the plaintiff and the Weaver Coal & Coke Company and that the Weaver Coal & Coke Company is not a party to this suit; and therefore the letter is irrelevant, immaterial and incompetent.

Which objection was sustained, to which ruling the plaintiff then and there excepted and said exception was allowed.

1503

The letter so refused reads as follows:

On Letter Head of Weaver Coal & Coke Co.,

CHICAGO, Jan. 26th,/04.

Buckeye Powder Company,
PEORIA, Illinois.

Dear Sirs:—

In the near future we expect to contract for our season's supply of powder for our several mines,—

1504

approximately, Thirty Thousand (30,000) kegs.

Kindly quote us your very lowest figures on this amount and advise just how promptly shipments can be made upon receipt of our specifications from time to time. This powder is for shipments to our several mines in ILLINOIS, INDIANA, OHIO and WEST VIRGINIA. Add, in your quotation to us, whatever other information, which you may think of service to us.

We would suggest in connection with this, that
1505 should any of your representatives be in this city, in the near future, that he call on us with whatever figures and facts he may have with him.

Awaiting your prompt attention, we are

Yours truly,

Weaver Coal & Coke Company,
J. A. Roberts,
Purchasing Agent.

1506 Q. Did you make a contract for your powder as stated in this letter about that time? A. Yes.

Q. With whom did you make the contract? A. The Indiana Powder Company.

Deposition of PETER W. KEITH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Keith, where do you reside? A. Kansas City, Missouri.

Q. How long have you resided there? A. Since the fall of 1908.

Q. What is your business? A. Chief Clerk in the General Purchasing Agent's office of the Central Coal & Coke Company.

Q. You are Chief Clerk? A. Yes.

Q. The Central Coal & Coke Company is a corporation? A. Yes, sir, of the State of Missouri.

Q. Who is or was the purchasing agent of the Central Coal & Coke Company, if you know, during the years 1903 to 1909? A. Thomas Mackie.

Q. What relation do you sustain to Mr. Thomas Mackie? A. Assistant. 1508

Q. Did you during that period I have mentioned act as an assistant? A. Yes, sir.

Q. Are you acquainted with his signature? A. Yes, sir.

Q. Where is Mr. Mackie at the present time? A. In Kansas City, he lives.

Q. Where? A. Weir City, Kansas.

Q. He is not in the city at the present time? A. No.

Q. You are acquainted with his signature? A. Yes, sir.

1509

Q. I show you a letter on the letter head of the Central Coal & Coke Company dated Kansas City, Missouri, May 24th, 1906, and I ask you to state whether or not you recognize the letter and whose signature is attached thereto, if you know? A. It of course is Mr. Mackie's name, signed by myself.

Q. You signed his name to that document by his authority? A. Yes.

Q. You were permitted to do that? A. Yes.

The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court plaintiff by

its counsel then and there excepted and said exception was allowed.

The letter so offered and refused reads as follows:

1511

Kansas City, Missouri, May 24, 1906.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

We will soon be ready to enter into a contract for our powder requirements for the ensuing year or for the next two or three years, and would be pleased to have you make us a proposition cover-
1512 ing same.

Kindly let us hear from you at your earliest convenience, and greatly oblige,

Yours truly,

Thomas Mackie,
Genl. Pur. Agt.

Q. I show you another paper, on the letter head of the Central Coal & Coke Company, purporting to be a letter dated Kansas City, Missouri, August 15, 1906, and I ask you to examine it and state whether or not you recognize the same and whose signature it is attached to it. A. I recognize the letter.

Q. And the signature? A. The signature being my own signature of Mr. Mackie's name, by myself.

Q. You wrote that by his authority? A. Yes, sir.

Q. And signed his name to it? A. Yes, sir.

Q. By his authority? A. Under general authority in the sense that I would not sign his name to any letter if I were not generally authorized to do so.

1514

The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed.

1515

The letter so offered and refused reads as follows:

Kansas City Mo., August 15, 1906.

Mr. R. S. Waddell,
Prest. Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:—

Referring to your letter of May 26th quoting prices on powder delivered at our various camps for the ensuing year, beg to state that this matter

has just been determined and I regret to advise that you were not the successful bidders.

Yours truly,

Thomas Mackie,
Gen'l. Pur. Agent.

Q. Mr. Keith, do you know how many kegs of powder were used by the Central Coal & Coke
1517 Company each year during the years 1903, 4, 5, 6, 7 and 8? A. No, sir, I don't know.

Q. Have you any general idea? A. Well, in a general way, I should say——

By Mr. Katzenbach:

Q. Is this from your own knowledge, or from something somebody else has told you? A. No, this would be of my own knowledge in a general way; we would use—it would fluctuate between 150 and
1518 225,000 or 300,000 kegs.

Q. Never less than 150,000? A. I should think so; I couldn't say that positive—or thereabouts.

Mr. Katzenbach: Cross examination is waived.

Deposition of JOHN W. FERGUSON, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Ferguson, where do you live? A. In Kansas City, Kansas.

Q. How long have you resided there? A. About thirty years.

Q. What is your business at the present time? A. I am a general contractor at the present time.

Q. What was your business during the years 1903 to 1908? A. Well, probably to 1907 I was engaged in the coal mining business.

Q. With what company, and at what place? A. I was president and treasurer of the Waverly Coal & Mining Company, situated at Waverly, Missouri.

Q. What was the business of that mining company? A. Producing and mining coal. 1520

Q. Did you use black blasting powder in the operation of your mine? A. Yes, sir.

Q. What kind of powder did you use? A. Several kinds; we used du Pont powder and Buckeye powder and a little Excelsior powder.

Q. How many kegs of powder about per year did you consume in your coal operations during that period? A. We would use in the neighborhood of—Well, if I had my book I could tell exactly.

Q. Well, at the present time? A. Right around four or five thousand kegs a year. 1521

Q. Never less than four? A. I don't think so.

Q. And never more than six? A. I should think not.

Q. I mean, never more than five? A. I think not.

Q. Of whom did you purchase your du Pont powder? A. I purchased it of the agency that was right here in Kansas City; I think a man by the name of Clark.

Q. The agency of the du Pont Powder Company? A. Yes, sir; I think a man by the name of Clark.

Q. Did you purchase that powder in the open market from them or were you under contract with

them? A. I purchased, I think, probably in the open market, but most of it was purchased under contract.

Q. You stated that you used at some time Buckeye Powder? A. Yes, sir.

Q. I will ask you if you have any knowledge of Buckeye powder that you ordered from the Buckeye Powder Company, which you afterwards cancelled? A. Yes, sir; I had one car load I cancelled after I had ordered it.

1523 Q. Do you remember when that was? A. Either the latter part of 1902 or the first part of 1903.

Q. Upon what do you base your independent recollection at this time of that matter? A. My independent recollection?

Q. Do you have independent recollections? A. Not exactly; I referred to some of my letters at the time.

Q. Have you those letters in your possession? A. No; you have them there.

Q. I will show you a letter written on the letter
1524 head of the Waverly Coal Mining Company dated Kansas City, Kansas, February 17th, 1906, and I ask you to examine the contents of the letter and the handwriting, etc., and state whether or not you recognize it? A. Yes.

Q. Do you recognize it? A. Yes, sir.

Q. Whose is it? A. That is my handwriting; that date is wrong I gave you.

Q. What is the date? A. It is—this is given here, I see, as February 17, 1906; my idea was, either the latter part of 1905 or the first part of 1906; that is what I really wish to testify.

Q. You wish to correct your testimony in that regard? A. Yes, sir.

Q. Now, having refreshed your memory from the documents which I show you, I ask you to state

whether the contents of that document—well, state the circumstances as they occurred at that time? A. I don't understand.

Q. I say, having refreshed your memory from the documents which I showed you, I ask you whether the document correctly states the circumstances as they were at that time? A. Yes, undoubtedly.

Q. Those are the facts? A. Yes, sir.

1526

The letter was offered in evidence and said offer was objected to on the ground that it is immaterial, irrelevant and incompetent, and said objection was sustained.

To which ruling of the Court the plaintiff by its counsel then and there excepted and said exception was allowed.

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The letter so offered and refused reads as follows, to wit:

(Letter head of Waverly Coal and Mining Co.)

Kansas City, Kansas, Feb. 17th, 1906.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

I wired you today cancelling car of CC Special Powder. I am somewhat tied up with the du Pont Company and I am obliged to do this. If you have

invoiced this car and it is shipped or if you consider that the powder belongs to us, ship it at once and date your invoice Feb. 16th. Ship by as slow freight as you please, as I do not care for it before the 1st of March, or even the 10th of March. I say this because I do not wish to pay for it until say 90 days. If you are willing to do this, ship it as directed, but don't give me away to the du Pont powder people.

1529 I will be clear of them in a few months. Wire me what you do. Saying you had shipped Feb. 16.

Respectfully,

Waverly Coal & Mining Co.,
by J. W. Ferguson, Pres.

Deposition of CLARENCE G. THURSTON, a witness produced on behalf of the plaintiff, being duly

1530 sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Thurston, what is your full name? A. Clarence G. Thurston.

Q. Where do you live? A. Bevier, Missouri.

Q. How long have you resided at Bevier, Missouri? A. About fourteen years.

Q. What business are you in now? A. Producing coal.

Q. Coal mining? A. Coal operator.

Q. And what company are you associated with? A. The Northwestern Coal & Mining Company.

Q. What business were you in between the years 1903 and 1909? A. I was connected with that company.

Q. The Northwestern? A. Yes, sir.

Q. What position do you hold and did you hold at that time in that company? A. At that time I think I was treasurer. I have for several years been Secretary and Treasurer.

Q. What is the business conducted by the company that you have just montioned? A. Mining business.

Q. In the mining of coal, do you use black blasting powder? A. Yes, sir.

1532

Q. Did you use black blasting powder during the years 1903 and 1909? A. Yes, sir.

Q. Of whom did you purchase the black blasting powder you used during that period? A. Well, commencing the last of 1903 up to and including a part of 1908, nearly all of 1908, we purchased of the Buckeye Powder Company of Peoria.

Q. Did you purchase black blasting powder of any other company during that period? A. I think not.

Q. You did not? A. I think not.

1533

Q. Then I understand you to say you used Buckeye powder exclusively during the period that you have just mentioned? A. Well, we bought it exclusively, I think, except some times owing to delay in transit; we borrowed it and would return it later.

Q. When any delays occurred? A. Yes, sir.

Q. After you ceased buying the Buckeye powder, of whom did you buy black blasting powder? A. The Western Manufacturing Company.

Q. Where is that located? A. At Peoria.

Q. Do you know whether there was any relation between that company and the Buckeye Powder Company? A. Any relation between them?

Q. Yes. A. As I understand, they were the successors of the Buckeye Powder Company.

1534

Q. Are you still using that powder? A. Yes, sir.

Q. And have you bought any other powder of any other company, person or corporation but the Western Manufacturing Company since you ceased buying of them? A. No, I have not; we have bought some——

Q. But have you bought any of any other company since 1903? A. No.

1535 Q. Have you any recollection as to the number of kegs of powder you got from the Buckeye Powder Company during the period you have mentioned? A. I looked over our records yesterday and I find we purchased during that period of Buckeye powder (looking at paper) 47,760.

Q. Was all that powder used in your mine at Bevier? A. All, I think, but 400 kegs; that was returned on the lot we probably loaned to our competitors.

Q. Will you state why the four hundred kegs you referred to were returned; I didn't understand you.

1536 Q. Now, during the time that you purchased Buckeye powder were you approached at any time by any persons and offered other powder for use in your mine? A. Very often.

Q. You say very often? A. Yes.

By Mr. Katzenbach:

Q. Did you do the purchasing of all your powder for your company? A. I ordered it all, and I think I made all the contracts.

Q. Contracts with the Buckeye Powder Company? A. Yes, sir.

Q. With the Buckeye Powder Company? A. Yes, sir, and as to the price, I couldn't say exactly if it had been offered at much less we would probably have bought elsewhere. I suppose other companies were——

By Mr. Abbott:

Q. Those were not written? A. Yes, sir; the price I think we paid for the first powder was $1.20 a keg and it was lowered by degrees until I think the minimum was 97 1/2.

Q. Were you under contract with the Buckeye Powder Company during most or all of the period you have mentioned? A. Practically; we made contracts and renewed them from time to time, and I don't know how many contracts were made; I think one or two of them were for one year, with the privelege of two years at our option." 1538

Cross examination by Mr. Katzenbach:

Q. Mr. Thurston, you purchased your powder from the person that offered you the best price like everybody else, didn't you? A. Yes, I tried to.

Q. You got your powder where you got it the cheapest? A. Yes, I think so.

1539

Depositions of R. S. TENNANT, a witness for the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Tennant, where do you live? A. Terre Haute, Indiana.

Q. How long have you lived there? A. Thirty years or more, I don't know just how much.

Q. What business were you engaged in during the years 1903 to 1908? A. Perhaps I can better answer that in this way, I am a lawyer and my interests at that time were various, including the coal business.

Q. What coal mines or companies did you have

any interest in at that time? A. Principally the owner and president of the Indiana Bituminous Coal Company, and the Cloverland Coal & Mining Company.

Q. In your mining operations, did you have occasion to make use of black blasting powder? A. Yes.

Q. Did you know at that time a company known as the Buckeye Powder Company at Peoria, Illinois? A. Yes, sir, I did.

1541 Q. Did you have an business with that company? A. Yes, sir.

Q. When did you first begin to have business with that company? A. I don't know.

Q. Do you know when the company first began business? A. No; I know I began business with them shortly after they began business, but I can't remember the year.

Q. Shortly after they began business? A. Yes, sir.

Q. How long did you continue to do business with that company? A. Until I largely retired

1542 from the active conduct of mining.

Q. About when was that? A. 1907 or 1908; I am not sure what time I quit the active management; it must have been in 1906, 1907 or 1908.

Q. How long did you continue to do business with the Buckeye Powder Company? A. The best of my recollection is, I closed with them in 1905 or 1906.

Q. I show you a letter, purporting to be written on the letter head of the Indiana Bituminous Coal Company, and ask you to examine the same and state whether or not you recognize the document? A. This is my letter.

Q. Does the examination of that letter serve to refresh your recollection as to the date you ceased to do business with the Buckeye Powder Co.? A.

It shows I was doing business with them in 1905 and previously; I gave an order for a car of powder; I don't know whether I did any business later or not.

Q. That is a letter written by you? A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Letter offered and received in evidence and read to the jury as follows:

Indiana Bituminous Coal Company, 1544
Cloverland Coal & Mining Company.

Terre Haute, Ind., Feb. 2d, 1905

Buckeye Powder Co.,
R. S. Waddell, Pres.,
Peoria, Ill.

Dear Sir:—

Enclosed I hand you check for $428.00 payment of balance due you on powder account. I also re- 1545 turn your receipt for $500. which retain, receipting our voucher for the full amount and return to us.

I note the receipt of your letter of the 26th. I am loath to withdraw my trade from you, the treatment and product have been satisfactory in the past and relations agreeable, but in these close times I feel we have to sacrifice our friends when it costs us money to hold them.

I will do this, however, as a sort of farewell. I will take one car of powder from you—a small car not above 400 or 500 kegs, and pay you $1.05. I won't be sure about the 60 days' payment but perhaps we can use the powder by that time and will try to satisfy you.

1546

Please note now from you, I want this price to be confidential as it would interfere with prices from other parties if known.

Ship the car to Cloverland Coal & Mining Co., Cloverland, Ind. (on the Vandalia). You can ship immediately, as that mine has a small supply on hand just now. Send number of car and date of shipment and follow with tracer.

Yours truly,

1547

R. S. Tennant,
President.

Q. I will ask you to state whether or not you did cease to do business with the Buckeye Powder Company at or about the time this letter was written? A. Some time in that year, I closed business with them.

Q. State what reason you had for closing business with the Buckeye Powder Company at the time you indicated? (Objection overruled.) A.
1548 Because I could buy cheaper elsewhere.

Q. After you ceased to do business with the Buckeye Powder Company with whom did you begin to do business or continue to do business? A. I would like some information there; I bought powder subsequently from the du Pont Powder Company, the Hazard branch, or the Indiana Powder Company, I remember the bills came to us——

Q. You may proceed to state how you recall that? A. I recall that the bill came with the general head of the du Pont people with the subhead of these other people.

Q. Have you any of those bills at the present time in your possession? A. Yes, but they are not accessible; I have them somewhere in the vault with a carload of material; I presume they are there.

Q. Can you recall at this time what price you paid the du Pont Company for the powder you purchased after you ceased doing business with the Buckeye Powder Company? A. My recollection is between 90 cents and $1, to the best of my recollection.

Q. How many kegs of powder did you consume at the two companies which you described you were interested in, from the time when you ceased doing business with the Buckeye Powder Company until you ceased to be connected with these two companies in 1908? (Objection overruled.) A. I was using them from ten to twenty-five cars a year from one or two cars a month. 1550

Q. How many kegs did each car contain? A. Contained 800 to 1,000.

Cross examination by Mr. Button:

Q. Whom did you buy from before you started in with the Buckeye Powder Company? A. Largely from the du Ponts.

Q. Why did you change to the Buckeye? A. As I recall, on account of friendship for the management of the Buckeye. 1551

Q. Mr. Waddell? A. Mr. Waddell.

Q. And you had known him previously? A. Yes, sir.

Q. At the time when he had worked for the du Ponts? A. Yes, sir.

Q. You knew he had been in their employ for twenty years? A. I knew he was with them.

Q. You were not interested in the Buckeye Powder Company? A. Not at all.

Q. Do you recall what this receipt is for—$500—which you sent back to Mr. Waddell mentioned in this letter? You say "I also return your receipt for $500"; what does that mean? A. The $500 had

been paid without sending a formal voucher, and the $428——

Q. That was the balance of the bill? A. Yes, sir; the total was $900 or whatever that figure is.

Q. You were not paying him for anything else besides powder? A. No.

Q. This letter states you were going to pay him $1.05 for this carload. A. I agreed to pay that.

Q. How much had you been paying him previously? A. I think the same price.

1553 Q. Are you sure about that? A. Well, fairly so. I know——

Q. Did you get any rebate or discount? A. No.

Q. It was $1.05 flat? A. Yes, sir.

Q. Did he refuse to sell you powder cheaper than that? A. Well, not as cheap as other companies did.

Q. Are you very clear in regard to the amount you paid to the Hazard or du Pont? A. The gross amount?

Q. No, the price per keg. A. I should say that

1554 probably the statement in that letter was correct.

Q. The statement here? A. I should say that was accurate.

Q. There is nothing here said about it. Are you clear in your mind about how much you paid for du Pont powder, du Pont or Hazard powder, when you made the change? A. I can't say. $1.05 must have been a lower price.

Q. I am trying to get at your recollection. You don't recall what the price was? A. I do not.

Q. There was considerable competition among a good many companies? A. Yes, sir.

Q. You had offers for powder from the Egyptian Miami and King's? A. Yes, sir, lots of them; a bunch of them.

Q. Did you buy any powder from any other

companies besides the Buckeye and the du Pont and Hazard? A. I think not.

Q. I suppose you are still friendly with Mr. Waddell? A. I haven't seen him for, I don't know how many years.

Q. You have not looked up your books or vouchers to refresh your recollection about the actual prices? A. I have not.

Redirect examination by Mr. Abbott:

1556

Q. You stated on cross examination that you had offers from a number of powder manufacturing concerns, and that there was a considerable competition. As I understand your testimony on direct examination you finally went to the du Pont Powder Company because it made you the lowest price of anybody? Am I correct in that? A. You are correct. I went to the du Pont Company because it offered me the lowest price.

Recross examination by Mr. Button:

1557

Q. What other prices were offered you? A. I don't know; I can't remember.

Q. And you don't know what the price of the du Pont powder was? A. No.

Q. Do you recollect any other companies besides the Hazard, du Pont and Buckeye, being mentioned in your direct examination? A. I think there was no other company mentioned.

Q. Then it could not have been true that you stated in your direct examination that the du Pont price was lower than that of any other except the Buckeye, no others having been mentioned? A. I don't understand your question. What I want to say is——

1558 *Thomas Jeremiah—Direct*

Q. I want an answer to the question. A. Your question is not intelligent; it lacks clearness.

Q. I will try to explain it. Mr. Abbott made a statement to you in the form of a question, to the effect that you had testified on direct examination that the du Pont price was lower than all other prices—of Buckeye and all other companies. Now, inasmuch as no other company but the Buckeye was mentioned in your direct examination, how could that be so? A. You don't have to name the
1559 other companies when you say that is the lowest price of any; I answered that the du Pont price was the lowest.

Q. Of all companies? A. You can say all companies—that's moonshine.

Q. Do you say of all companies they were the lowest? A. I say of all companies they were the lowest.

Q. How much? A. I don't know.

Q. Were they lowest during the period you traded with them? A. My recollection is that they must have been, or they would not have been given
1560 the business.

Q. Have you any recollection about it or is that your conclusion? A. I have a very good recollection about it.

Deposition of THOMAS JEREMIAH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Jeremiah, where do you live? A. Willisville, Illinois.

Q. What is your business? A. General Superin-

1561

tendent of the Willis Coal Mining Company.

Q. How long have you been engaged in that business? A. Twelve years.

Q. What business is the Willisville Coal Mining Company engaged in, and has been during the time you have been superintendent? A. Rock business and coal business. One of them is called the Columbia Quarry Company, and the other the Wills Coal Mining Company, and I represent also the Mid-Valley Oil Company.

1562

Q. Have you had occasion to use black blasting powder in your operations of the Willisville Coal Company? A. Yes.

Q. What kind of black blasting powder have you used? A. I have—do you mean in these last twelve years?

Q. What kind of black blasting powder have you had experience with in coal mining operations? A. I think most all sizes and almost all manufactures that is made for practical use in mines.

Q. Have you ever used any black blasting powder known as the Buckeye Powder? A. Yes, sir.

1563

Q. When did you first begin to use Buckeye Powder? A. I am not positive of those dates. My records at the office will show.

Q. Can you state approximately about the time when you began using it? A. I think about 1903 to 1905. I am not positive of these dates. My record will show exactly.

Q. How many kegs of black blasting powder did you use from the period 1903 down to the time—— A. I think it was 1905.

Q. When you began using it? A. No, I said I think it was from 1903 to 1905, I am not positive.

Q. How many kegs of black blasting powder did you use during the time you indicated of Buckeye Powder? A. Something over 28,000. I'm not going to be positive.

Q. 28,000 kegs? A. Yes.

Q. State in your own way just what were the results that you had from the use of black blasting powder, that is Buckeye Powder? (Objection overruled.) A. I don't know in what way you mean by results. The powder was perfectly satisfactory to me. I never had any trouble using it.

Q. Did you ever have any complaints regarding the use of Buckeye Powder from the miners who used it? (Objection overruled.) A. No, I can say
1565 I never had complaints from the miners that used it, with the exception of one individual.

Q. Tell about that, will you, what the complaints were and the circumstances surrounding it? (Objection overruled.) A. When I started using the powder I never had any powder commission at my mine. All the tests were made by myself, and I put it up to the Mines Committee at the time of making a change. I said to our people, "You make the contract and furnish a certain grade of powder and we will use it," and I made practically all
1566 the tests. I have taken it up with the different mine committees before I would change the powder, and I would tell them I would make a change and that I wanted to get practically the same brand or grade of powder I have been using, and when I made this change to the Buckeye Powder I told Tom Reynolds that I would take it up with the mine committee, and I didn't think it was necessary for him to go down. He afterwards asked me if I had any trouble and I told him with one individual. He noticed there had been a change and he come to me personally, and said the powder wasn't as good as the one we had been using, so I went to the mine committee and told them that he had registered a kick, and I told him to send his powder out and I would send him another keg.

The mine committee and myself took the powder that he sent out, poured it into another keg of a different brand, sent it back into the mines and I asked him the following day how the powder was working and he said that it worked fine. I remember making a statement to Tom Reynolds, and I told Tom that was the only complaint. That is the only one I had.

Q. Mr. Jeremiah, what other occupations or offices do you hold at the present time? Are you connected in any way with any of the state or- 1568
ganizations of the miners or coal operators? A. I am a member of the mine investigating commission of the State of Illinois. I am a member of the executive board of the Operators' Association of the 5th and 9th District. I am president of the Village of Willisville, and a member of the Prairie County Fair Association. I am president of the Willisville Breeding Association.

Q. State what the duties are of the Miners' Investigating Commission? A. To take up the laws and go over them each year and make such neces- 1569
sary changes as we think would be applicable to the condition of mining from year to year, and make our reports to the State Legislature.

Q. What were the laws, if any, and the rules and regulations, if any, which obtained with reference to the various grades of powder during the years 1903 and 1909? (Objection overruled.) A. They practically had no law regulating the standard of powder until last year.

Q. By standards of powder, what do you mean? A. The different sizes.

Q. Since 1909 has there been any change in the law so far as you know with reference to the standard sizes of powder which may be used in the State of Illinois? (Objection overruled.) A. Yes.

1570 *Thomas Jeremiah—Cross*

Q. State, in a general way, what the rules and regulations were between 1903 and 1909 concerning the grades, the various grades of powders. How did you determine what a certain grade of powder was at that time? A. Well, I determined mine with a screen, and I couldn't find there was any uniformity in the brand. Mr. Waddell will remember that I had a perforated screen and I don't care what he wanted, I wanted this size of powder
1571 because I wanted the same size I had tested out as near as I could. I never paid any attention to the different brands, but they had "F" brands, single F's and CCC's.

Cross examination by Mr. Katzenbach:

Q. Mr. Jeremiah, this time you sent for Mr. Waddell to come down and see the powder. That was because there was different sized grains in the same keg. A. I didn't send for Mr. Waddell. I had the question up with his agent and himself, and
1572 Mr. Waddell, that was the only time I saw him until I met him in Chicago. The agent brought Mr. Waddell down.

Q. Mr. Waddell came down to your mine? A. Yes, sir.

Q. What brought him down there, your request? A. My request to him, yes, to make this powder uniform. I suppose Mr. Reynolds had that matter up with him.

Q. It wasn't uniform and you wanted him to make it uniform? A. The powder?

Q. The Buckeye Powder. A. I hadn't made any contract with them. I didn't purchase it. I wouldn't make a contract until after we had tried this powder.

Q. This was a special kind of powder that you told them you wanted? You wanted a special

grade? A. It was the same size I had been using because I have tested the other out and it gave me satisfaction, and our company had taken the matter when they wanted to change the contract, and took that position. If you make your contract, and if they make a contract to standard, we would use the powder, and so far I have used it without any trouble, without having any trouble, and we never had a commission to my mine to say what powder I should use. I want to state we had no contract with Mr. Waddell when he came down there, 1574 because the company was particular not to go into any contract until I had my side of it covered up.

Q. In the mines of your company do you do much undercutting of coal? A. Yes.

Q. The veins are very large? A. Yes, sir.

Q. And that is a particularly good sized vein, is it not? A. Not for Southern Illinois. They run up to eleven feet.

Q. And what was this? A. This was six feet.

Q. And you undercut and then you use the powder after undercutting? A. Yes, sir, now I do. At 1575 that time they were not machine mines. I used two different kinds of machines.

Q. And the machines are used for undercutting? A. Yes, sir.

(Reading): "WILLIAM J. FLAUAUS, sworn in behalf of the Plaintiff, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Flauaus, where do you live? A. At Du Quoin, Illinois.

Q. How long have you resided at Du Quoin? A. Since 1881.

Q. What business are you engaged in now? A. Foreman, top foreman at the mine.

Q. What mines? A. At the Queen Mine.

Q. What business were you engaged in during the years 1907 and 1908? A. I was check weighing for miners.

Q. At what mine? A. At the Majestic.

Q. Who was the owner of that? A. Mr. Eden was superintendwent; it was known as the Clear Clinch property.

1577 Q. Where was it located? A. About four miles and a half southeast of Du Quoin.

Q. What position did you hold other than the one you have testified to in 1907 and 1908? A. Along in this year I was secretary of the Local 98 of Mine Workers.

Q. What association? A. The United Mine Workers of America.

Q. Did you ever have any experience in practical mining yourself? A. Yes, sir, I had some in the neighborhood of between one and two years' ex-

1578 perience; in fact, I started in as a trapper boy.

Q. Have you had any experience with the use of black blasting powder? A. None, only that time while I was at the case.

Q. Was black blasting powder used in this time while I was at the case?

Q. Was black blasting powder used in this mine where you were employed during 1907 and 1908? A. Yes, sir.

Q. What kind of powder was employed? A. Why, it was Miami F. F.

Q. Now, state how long previous to 1907, if you know, that any powder was used in this mine where you were operating? A. I couldn't state the stipulated time, but it was a year or two it had been used there.

Q. In your position as secretary of the local, did you have anything to do with the miners employed in that mine? A. Oh, yes.

Q. Do you know of your own knowledge, of any request, or any information that was requested in regard to the black blasting powder then being used in the mine? A. Yes, sir.

The reading of the remaining portions of the deposition was objected to and said objection sustained, and the same was excluded, to which ruling 1580
the plaintiff's counsel then and there excepted, which exception was allowed.

The portion excluded reads as follows:

A. I will state that being the secretary of the Local and when they had a meeting, when any objections 1581
came up in regard to powder they were using, quite a number of the miners stated that they were getting inferior powder, and that their contract called for $1.75 for their keg, and they were getting powder that wasn't up to the standard; they were getting inferior powder, they said, and they ought to get a good standard powder; and we had quite an argument in the Local that night, and I was secretary of the meeting this night when the objection came up in regard to the powder; and we had quite an argument that night, and the Local officials were instructed to take it up with the company and see if something was wrong, or something could be done.

Q. What was the result of the instruction which

was given to you by the Local; what steps, if any, did you take? A. I went with the president, and we took it up with Mr. Eden; we went together, and we took it up with him and Mr. Eden told me he was surprised to learn there was any kick coming on the powder; that they had to change contracts in recent years, and he said they had made a new contract some few months prior to this, and he didn't know why all the powder shouldn't be the same, and he seemed to leave the impression that
1583 the men just wanted to kick; but it kept getting worse, and they had a devil of a time, and they didn't get as much tons of coal as they used to do. So we reported that to the men; that was about all we could do; and he said he would take it up with the powder company immediately and see if they were not sending powder according to agreement. It went on for a week, and the miners got me on a foot car, and we called an indignation meeting, and we took the powder question up, and they stated that no other man should buy a keg of that powder;
1584 and we run for about five days, and we didn't get out much tonnage; nobody was shooting much. Finally we took the case up with the State officials, and they came down, and they failed to do anything, and he ordered a strike on us; prior to that we were fooling around there. I was coming up the street one evening, and while I was there, one fellow came up the street and hollered, "Hey, Flossy, I want to see you"—that's what they used to call me, some of the fellows, "Flossy"; and he said a fellow over in the saloon wanted to see me and the officers of the Local. I goes over to the Palace saloon, and I met a large gentleman named McCollie, and he introduced himself, this fellow did, and we got familiar, and we called him "Mack." So he got newsy, and he wanted to know my posi-

tion in the Local, and I told him the secretary; and he said, "I want you to get some of your officers and practical miners together, and I want to have a talk with them. You are making a fight upon our powder." Of course, I didn't care a damn——

By Mr. Katzenbach:

Q. This was Miami powder? A. Yes; and I said "All right." I went out and counted up nine or ten or fifteen of the boys, and we set around a nice 1586
big table and he out with a row of bills, and he said, "Give these boys something to drink." Well, we wasn't going to let that go by, and we sat there until the saloon closed, talking powder. And he showed us a lot of samples, and showed us that it was impossible for that powder to be wrong; and he said he had all grades of powder from "C," "F," all the way along, and some was as big at marbles; and he gave me bottles of powder to show to the miners; and he said that I could keep it in my desk and display it to the miners.

Q. Who gave you this powder? A. Mr. Mc- 1587
Collie, he gave it to me; I took it up and showed it to the boys, and they all swore that wasn't the powder that was in their kegs. We didn't know what was up the tree, and we wanted to be on the right side, so they fetched in some that was in their kegs; and all the mines that were in the one local, they had 1,100 members, and one man was using King's, and another was using Du Pont, and we told these boys to fetch in samples and we would see what was doing. When they fetched in from the other mines, we didn't get any King's; I believe they said they were out; we didn't get any King's, they were borrowing powder. You see one mine would be using King's and another mine using Du Pont's, and we didn't get any King's; they said they

were out, and they were borrowing Du Pont's; they were out of King's at that time. We got some Du Pont's from Forester's, and we put them alongside of the samples Mr. McCollie gave us, and you couldn't tell the difference in the powders; but not one of them fetched the powder that our boys was using; there was quite a difference.

Mr. Katzenbach: I move to strike out the answer as being hearsay, and incompetent,
1589 irrelevant and immaterial.

By Mr. Abbott:

Q. Now, state more clearly what you mean—I will ask you what you did, if anything, after you had these samples and made these comparisons which you have indicated. A. Yes, sir, we took the samples down to Mr. McCollie, and in the meantime, Mr. Sharp; he claimed he was the representative of the Illinois country, and he was helping Mac demonstrate this powder, and Mr. McCollie
1590 said, "There does appear a little difference, and in order to give it a start, I will order a dozen kegs or so sent out from our office, and I want you to pick good men and let them try it"; that's what he said, and I said "All right"; he said, "They'll get a free keg of powder, and you won't have any trouble selecting your men." Well, that powder worked fine; for about a week we would meet him over in our headquarters—it was in the saloon; and we kept notifying other miners, and inviting them in; and finally, it got to be a pretty nice thing, that powder man being there treating them nights. On Saturday evening Mr. McCollie said that he was told that you couldn't get a drink here on Sunday; I said, "That's all right," and he said, "I'll tell you what I want"; I said, "All right, anything that's le-

gitimate is all right." He said, "We want to demonstrate to you that our powder is all right," he said, "Mr. Sharp and myself worked among the miners while Mr. White is sales agent—he does the selling, but we are attending to the miners' troubles, and we want them to decide to use our powder." He said, "Get as many of the boys for a nice time to-morrow." He said he was told they couldn't get a drink, but that would be all right. He said, "Do you know where we could get a good hall?" and the bartender said, "Yes; I know a 1592
place and a fellow who's running a barber shop up there, and they have a club room there," and he said, "They have cards and things, and you could have a few drinks, and I could get that for you"; and he said, "You get it, and I will pay whatever is right"; and he said, "It falls between you to fix up a list of what is good, and we want to have a hell of a blow-out"; and I said, "All right, how many do you want?" and he said, "Any miners you want to ask up"; and I asked the bunch, and he jacked out this big roll, and gives me in the neigh- 1593
borhood of forty-five or fifty dollars—I can't recollect now the exact amount—and he said if that wasn't enough, that he wasn't broke, that I should draw on him for more. And I gets a lot of chickens and gets in with the young lady to fry them up, and I ordered ten or fifteen kegs of beer, and then I invited the boys to the blow-out; he told me to do that, and that he wanted to meet the miners and to become more friendly, and he said that he didn't want us kicking on the powder; if there was anything wrong, he wanted to know it. And we had a damned jolly time all day Sunday, and Mr. McCollie was a fun-maker for us, and he sung and made speeches, and we had a splendid time, and there was about half of the committee up there; the rest of them were average miners.

Q. What committee? A. The powder committee.

Q. A regular or a special committee? A. A special committee.

Q. Who were the members of that? A. Jim Cross——

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. George Armstrong, and I can't think of all of
1595 them at this time.

Mr. Katzenbach: I move that the answer be struck out as incompetent, irrelevant and immaterial, and hearsay, and not connected with the defendants or other parties interested in this action.

Q. What were the powers of this special committee? A. They were appointed to meet with the operators and also the representative of this powder, and see if they couldn't get an adjustment of the
1596 reason why this powder was inferior as it was.

Q. Did they afterwards meet with the powder men? A. Yes, sir.

Q. Tell what steps were taken, if any, after that, to determine the matter of the quality of the powder.

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. After Mr. McCollie had sent for these sample kegs, he said "They come out of the magazine, and the car is loaded in the same manner." That showed up pretty good, and we called upon Mr. Eden and bought the powder again. He said, "I can give you Du Pont powder," and I said, "No, under in-

structions from the Local, we don't want nothing but 'Double F' Miami powder."

Q. Had you made any test or trial in which Du Pont powder figured? A. In the same thing, not a quarter of a mile away——

Q. At this time? A. We made the test later on.

Q. Then, go on with your story. A. So Mr. Eden got awful mad at me; they called me "wind jammer" or something. It didn't make any difference to me which powder they used, one was about as costly as the other; and that's what he said, and I 1598
said the boys didn't want Du Pont, they wanted "F. F." Miami; and we got in a wrangle.

Q. What was the result of the notice or demand which you gave to him? A. The boys came out on strike; they wanted that powder, and we didn't care, we had our nice time; and so the boys, they came out on strike.

Q. Why?

Mr. Katzenbach: That is objected to as irrelevant and immaterial.

1599

A. Because Mr. Eden then wouldn't make use of Miami powder; so we came out on strike and sent for the State officers, and they came down there, and he came down there, and I believe he used these words—he said, "Boys, I believe you have played behind the curtain long enough, it's time to raise it; you come out until the company gets you the powder you think you can do the work with." We were out on strike for several weeks, and I kept getting commissaries from the State.

Q. By "commissaries" what do you mean? A. You know when you are ordered on strike by the State officials, they pay the miners so much a week.

Mr. Katzenbach: I move to strike out the

answer to the last question as being hearsay and incompetent, irrelevant and immaterial.

Q. I wish you would state, if you know, what was the result of this strike which was called; how long did it last?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

1601 A. Well, it lasted several weeks. In the meantime, while the strike was going on, we discharged some of them off the committee; one of the committee wanted Du Pont powder, and they told him he wasn't right, and one of them got him. Mr. McCollie had promised them a box of shells to go hunting with, and he hadn't got them; and we kept getting commissaries, and it run away up into the thousands; and it come time then for the convention at Peoria.

Q. The convention of what? A. The miners.

1602 Q. What convention is that technically known as? A. The United Mine Workers' convention at Peoria. And so we selected a couple of delegates to go up there, and knowing that we were still on the commissary list, I got a letter stating we were off the commissary list; and they sent our delegates back to tell them there had been some fraud about the thing—that the powder men had bought some of us local officials.

Mr. Katzenbach: I move that the answer be struck out as incompetent, irrelevant and immaterial, and containing hearsay testimony.

A. (Continued.) So our delegates went back to the convention, and the miners got back together again, and they decided to have a test between the

Du Pont and Miami powders; and the miners were to select a miner, and the company was to select a miner, and the miners was to put a man on top to count the tonnage, the per cent. of screening and the lump coal.

Q. Was that test held or not?

Mr. Katzenbach: That is objected to as immaterial, and irrelevant.

A. Yes, sir. 1604

Q. What was the result of that test, if you know?

Mr. Katzenbach: The same objection.

A. We got a notice from the convention that we should go to work, and that we would have that test. When I got the communication, I called a special meeting of the miners and protested against any such decision; so they sent a committee to the convention to serve notice that if we didn't get to work and take up the test, we would be fined ten dollars; so we had a test, and we tested Miami so 1605 many days and Du Pont so many days, and there was such a little difference in the test of the powder, and the difference was nothing much—and we returned to work.

Q. You did return to work? A. Yes, sir, after we had been out several weeks, I guess. Counting wages and the money we derived from the State funds, amounted to over seven thousand dollars.

Q. What powder did you use after the test? A. Miami.

Mr. Katzenbach: I move to strike out the preceding answer, on the ground that it is hearsay and incompetent, irrelevant and immaterial.

1606 Q. How many members of your Local Union were there at the time of this difficulty that you have testified to? A. The time we had the powder strike?

Q. Yes. A. Well, the membership of the Local was between ten and eleven hundred; all the men affected by the strike was in the neighborhood of six or seven hundred.

Q. Now, do you know of your own knowledge, what was the action of the convention at Peoria with reference to the owner of the mine concerning
1607 that strike?

Mr. Katzenbach: That is objected to as incompetent and irrelevant and calls for hearsay.

A. I know that the operators made a demand that they be reimbursed.

Q. Do you know whether he was reimbursed or not? A. I do not.

Q. Do you know, of your own knowledge, whether any money was paid by either of the powder
1608 representatives that you have testified regarding, to any other person than yourself at that time?

Mr. Katzenbach: That is objected to as incompetent, irrelevant and immaterial.

A. I will only state in regard to the money transaction, all I know is what I got.

Q. Do you know who was the representative of the Du Pont Company that was there at that time?

Mr. Katzenbach: That is objected to. There is no statement that there was any representative of the Du Pont Company.

Q. I will ask you whether or not there was a

representative of the Du Pont Company there at the time of this disturbance? A. During the strike there was a man met me in the saloon there, and introduced himself, but what his name was, I don't know; I had one drink with him, and I don't remember his name. I told him to stay away.

Q. Can you describe him? A. Yes; he was about forty years old, forty years of age, and about my height, and somewhat slimmer than I am.

Q. Do you know where he came from? A. No. 1610

Q. Don't you know where he came from? A. No; I know he was a man in the saloon.

Q. Did he give you his name at all? A. Yes; and said he was representing the du Pont Powder Company.

Mr. Katzenbach: That is objected to as irrelevant and immaterial and hearsay, and I move that the answer be struck out.

Cross-examination by Mr. Katzenbach:

1611

Q. What was the date of this occurrence that you have been talking about? A. Along in the neighborhood of 1907 or the early spring of 1908.

Deposition of EMIL BRECHNITZ, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Brechnitz, where do you live? A. Belleville, Illinois.

Q. How long have you lived in Belleville, Illinois? A. All my lifetime.

Q. That makes it necessary for me to ask you how old you are? A. 34; I will be 34 in May, in 1879 I was born.

Q. What is your business? A. In the general mercantile business.

Q. Are you alone in business, or are you associated with someone? A. At the present time?

Q. Yes. A. I am associated with my brother; it is a corporation; my brother, myself and my mother; my mother has one share.

1613 Q. What is the name of the corporation? A. Brechnitz Brothers' Mercantile Company.

Q. That is in Belleville? A. Yes, sir.

Q. What is the business of the Brechnitz Brothers' Mercantile Company? A. We do general grocery business, and handle some dry goods, shoes and black blasting powder.

Q. How long have Brechnitz Brothers' Mercantile Company been doing the business you have just stated? A. I am under the impression it is four or five years that the corporation was formed.

1614 Q. Previous to the incorporation, how was the business carried on? A. In the name of C. G. Brechnitz.

Q. How was the business carried on during the years 1903 to 1909? A. At that time it was carried on in the name of C. G. Brechnitz, and my brother and I conducted the business.

Q. You stated that, as a part of your business, you dealt in black blasting powder. I wish you would give the history of your dealings in black blasting powder, how you began and generally, just how you carried on that business. A. Well, you have reference to just my experience?

Q. No, I mean the experience of C. G. Brechnitz, the business which was carried on under that name, and which you were conducting. A. My father has

been in the powder business, I think, ever since 1874, and I came into the business, I think, in 1889.

Q. At the time when you entered the business in 1899, did you have any special customers to whom you sold black blasting powder? A. Yes, sir.

Q. Can you, at this time, give a list of those customers? A. I guess I can pick you out some. You have reference—at that time I was selling Oriental Powder; do you want me to give those customers?

Q. What I desire to know is, with whom you 1616
were conducting business, in black blasting powder, at the beginning of your entering into the black blasting powder business. (Objection overruled.) A. At that time, we were buying powder of Mr. J. L. White, and he handled the Oriental and Austin Powder; we were buying both, mostly Oriental Powder.

Q. How long did you continue to handle the Oriental Powder? A. We continued to handle Oriental Powder, I am not positive, but I think two or three years from that time; at any rate we 1617
handled the powder until the price of powder went up to $1.35; whatever the year is—I can't remember.

Q. Was it the price of powder going up to $1.35 that caused you to retire from the selling of Oriental Powder? (Objection overruled.) A. We didn't retire entirely; the price of powder was put up to us at $1.35 and the price of the powder, it was sold to the large miners at $1.25.

Q. State again if that was what caused you to retire? A. We didn't retire, I say, the price of powder to us was $1.35, and the price was sold to large miners as $1.25.

Q. You mean the powder? A. Yes; we couldn't supply the larger trade, and we had the smaller

trade we supplied from that time on. At that time we made a switch, and we quit buying Oriental Powder and bought some from Barron and Hawley.

Q. How long did you buy from ther? A. I think a year will cover it; I am not positive of the date.

Q. Do you know the Buckeye Powder Company and when it entered the business? A. The Buckeye Powder Company was commenced—I don't know—the Buckeye powder was the next I bought, the
1619 next parties from whom I bought powder was the Buckeye Powder Company.

Q. Where was it located? A. Peoria, Illinois.

Q. When did you begin buying powder from the Buckeye Powder Company? A. I think it was in the year 1903.

Q. When you began buying powder of the Buckeye Powder Company, did you have certain customers with whom you handled that powder? A. Do you mean to whom I sold it?

Q. Yes. A. Certainly.

1620 Q. Can you name the customers you had at that time, to whom you sold black blasting powder? A. Give me a few minutes' time.

Q. I won't trouble you at this time; did you make any special arrangement with the Buckeye Powder Company for the handling of its powder? A. Yes, sir.

Q. Was that arrangement in the form of a contract? A. Yes, sir.

Q. How long did you continue to handle the Buckeye Powder? A. I think that I handled that until some time in 1906.

Q. Can you remember the date? A. No; I only can remember when I started buying du Pont; that was the termination of the Buckeye.

Q. When did you start buying du Pont? A. That was in March, 1906.

Q. Can you recall about the number of kegs of powder that you bought of the Buckeye Powder Company during the time you were doing business with them? A. Do you mean in the three years?

Q. Yes. A. Well, I can't recall the exact amount, I will say some 20,000 kegs.

Q. What caused the change which you made from the Buckeye Powder Company to the du Pont Powder Company? A. Well, that is—there may be several answers to that. You see, during that time, the du Pont Powder Company, or rather at 1622
that time the Phoenix Powder, were selling to my customers, and it got to such an extent that I only had a few customers left; and that, together with the price, and the convenience of getting du Pont powder whenever I wanted it, caused me to switch over to them.

Q. Speaking of the price of the powders, what price did you receive from the due Pont Company at the time you decided to make the change to the du Pont Powder? A. I have that in contract form, and one of the conditions of the contract is that the 1623
price be kept confidential.

Q. You made a contract with them at that time? A. Yes, sir.

Q. Have you the contract with you? A. No, I haven't it here.

(Original contract subsequently produced by defendants and offered and received in evidence as Plaintiff's Exhibit 713 and read to the jury, as follows.)

"This contract made between the E. I. du Pont Company, a corporation of the State of Delaware, party of the first part, and C. G. Brechnitz, Belleville, Illinois, party of the second part. Witnesseth, that the party of the first part hereby sells and party of

the second part buys, all the black blasting powder in kegs of 25 pounds each, required for sale to customers of second party in the Belleville district for the period of one year from this date at the carload price of 95 cents per keg of 25 pounds, such quantity not to exceed 10,000 kegs including sales by E. I. du Pont Company to Prairie Coal Company. The following conditions are mutually accepted.

1625 A. First party agrees to allow second party the actual carload freight charges from shipping point to Belleville.

B. Terms are sixty days or two per cent. discount for cash if remitted within ten days from date of invoice.

C. Second party agrees to buy from first party in carload lots of 400 kegs of 25 pounds each.

D. The first party may furnish and the second party will accept under this contract powder of any standard brand, make and quality, equal to Phoenix or du Pont brands.

1626

E. The first party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

F. The terms and conditions as well as the existence of this contract to be confidential.

Dated at St. Louis, April 11, 1906.

(Signed) E. I. du Pont Company,
EUGENE DU PONT, G. S. A.
C. G. BRECHNITZ, E. B.

Witness: J. C. MACKLEM.
Witness: CHARLES B. SPICER,

Q. Had you any contract with the du Pont Powder Company while you were doing business with the Buckeye Powder Company? A. I never had two contracts in effect at the same time.

Q. So that your contract dated after the time when you ceased doing business with the Buckeye Powder Company? A. Yes, sir.

Q. How long did that contract continue? A. With the du Pont Company?

Q. Yes, the first one. A. One year.

Q. At the end of that year, did you continue doing business with the du Pont Company under comtract? A. Yes. 1628

(Original contract subsequently produced by defendants and offered and received in evidence as Plaintiff's Exhibit 712 and read to the jury as follows:)

This contract entered into the 12th day of April, 1907, by and between E. I. du Pont de Nemours Powder Company, a corporation of the State of New Jersey, party of the first part, and Brechnitz Brothers' Mercantile Company, Belleville, Illinois, party of the second part. 1629

WITNESSETH: That the party of the first part hereby sells and party of the second part hereby purchases all the black blasting powder, in kegs of 25 pounds each, required for sale to customers of second party in the Belleville district, for the period of one year from this date, at the carload price of 95 cents per keg of 25 pounds, such quantity not to exceed 10,000 kegs, including sales by E. I. du Pont de Nemours Powder Company to Prairie Coal Company. The following conditions are mutually accepted:

1630 *Emil Brechnitz—Direct*

A. First party agrees to allow second party the actual carload freight charges from shipping point to Belleville.

B. Terms are sixty days or two per cent. for cash if remitted within ten days from date of invoice.

C. Second party agrees to buy from first party in carload lots of 400 kegs of 25 pounds each.

1631

D. The first party is not to be responsible for delays caused by strike, accident or causes beyond its control.

E. The terms and conditions, as well as the existence of this contract, to be confidential.

F. This contract does not become effective until accepted by the E. I. du Pont de Nemours Powder Company at Wilmington, Del.

1632

E. I. du Pont de Nemours Powder Co.,
By Charles B. Spicer.
Brechnitz Brothers' Mer. Co.
By E. B.

Accepted at Wilmington,
Delaware, April 15, 1907.

E. I. du Pont de Nemours Powder, Co.
Eugene du Pont, A. G. S.

Q. How long did the second contract continue? A. The second contract continued a year. It was not made exactly right after the first one; there may have been a month or two elapsed in the meantime.

Q. But you continued to do business with them? A. Yes, sir.

Q. After the second contract expired, did you continue to do business with the du Pont Powder Company? A. Yes, sir.

Q. Was that under contract also? A. Yes, sir.

(Original contract subsequently produced and offered and received in evidence as Plaintiff's Exhibit and read to the jury as follows): 1634

This contract entered into this 10th day of July, 1908, by and between the E. I. du Pont de Nemours Powder Company, a corporation of the State of New Jersey, party of the first part, and Brechnitz Brothers' Mercantile Company, Belleville, Illinois, party of the second part.

(1) WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases all of the black blasting powder in 25 pound kegs required by the party of the second part during the period of this contract, for sale to its customers in the Belleville district, at the following prices: Blasting powder at $1.10 per keg, delivered Belleville, carloads 800 kegs. Blasting Supplies: 1635

The above prices are based on present freight rates and present minimum carload quantity, but in case the present freight rates or present minimum carload quantity are increased or decreased during the existence of this contract, the amount of such

increase or decrease shall be added to or deducted from the above prices.

The above prices are also based on present method of packing and transporting powder, but in case the present method of packing and transporting powder is prevented by law or railway association regulations during the existence of this contract, then in that event this contract may, at the
1637 election of the party of the first part be terminated.

The following conditions are mutually accepted: (2) Terms are thirty days, two per cent. for cash within ten days from date of invoice. (3) It is agreed that explosives furnished under this contract are for consumption of the party of the second part only and for sale except to its own sub-contractors or customers and that a violation of this clause gives the party of the first
1638 part the option of cancellation of this contract. (4) The party of the first part is not to be responsible for delays caused by strikes, accidents or causes beyond its control. (5) This contract to go into effect on the 10th day of July, 1908, and continue in force until the 10th day of July, 1909, and thereafter from year to year unless written notice is mailed to the address of either party, by the other, sixty days prior to the 10th day of July, of any year, in which event upon the arrival of such date the contract is to be terminated.

(6) This contract does not become binding until accepted by the E. I. du Pont de

Nemours Powder Company, at its main office at Wilmington, Delaware.

E. I. du Pont de Nemours Powder Co.,
By Walter C. Clark, Manager,
(O. K., Spicer).
Brechnitz Brothers' Mer. Co.
By Emil Brechnitz.

Accepted at Wilmington, Delaware,
July 17, 1098.
E. I. du Pont de Nemours Powder Co., 1640
By William Coyne.

(The following letter, produced by the defendants, with the said contract, was offered and received in evidence as Plaintiff's Exhibit and was thereupon read to the jury by plaintiff's counsel.)

In reference to the contract made July 10, covering your powder requirements for the year ending July 10, 1909, it is agreed and understood that we will allow you a com- 1641
mission of ten cents per keg on all purchases made under that contract during the contract term, and ten cents per keg on all blasting powder invoiced by us to the Prairie Coal Company, at $1.10 per keg, f. o. b. Belleville, under contract to be made with the Prairie Coal Company, the above commission to be paid on the condition that Brechnitz Brothers' Mercantile Company will maintain prices as published and quoted by us from time to time. The terms and conditions of the contract otherwise remain unchanged.

Yours very truly,
E. I. du Pont de Nemours Powder Co.,
By Walter G. Clark, Manager.

1642 *Emil Brechnitz—Direct*

(The reading of the deposition was continued as follows.)

Q. Counsel for defendants asked you a question concerning whether, after you left the Buckeye Powder Company the first purchase which you made of the du Pont Powder Company was under contract and you stated that it was not; will you state the circumstances and facts concerning any purchase or purchases which you made from the
1643 du Pont Powder Company before you entered into a contract with them? A. Why, about that time the mines worked briskly, being the termination of their contract, the first of April, which we didn't figure on, and before we knew it, we had a very scant supply of powder. I am not positive if I telephoned Mr. Waddell for a car or not, but if I did, it was refused, and we couldn't possibly get it there in time and I was compelled to buy powder elsewhere to keep up the trade I had at that time; I think he refused, that he couldn't, that he couldn't
1644 get it there in time.

Q. That was the first purchase? A. Yes, sir, of the Buckeye Powder Company.

Q. After you found you needed powder, then what did you do? A. After I found out I needed powder and couldn't get it at the proper time from the Buckeye Powder Company, I went to the du Pont, and I am not positive if I bought from the Austin Powder Company or from the du Pont, but at any rate, it was a small amount of powder I got from the Austin Powder Company, if I did; but after that supply ran out, I telephoned to the du Pont Powder Company for a supply.

Q. To whom did you make your application? A. To Mr. Spicer.

Q. State what occurred? A. I told Mr. Spicer

I needed powder and needed it right away, and as far as I remember, I offered him $1.05 for the powder.

Q. Did he accept that offer? A. Yes, sir.

Q. And how much did he deliver you on that order? A. I think it was either four or five hundred kegs.

Q. Now, after that order was given to them, did you make any further purchases of the Buckeye Powder Company before you entered into the contract with them? A. I think that was all I 1646
bought on the open market.

Q. Were there any other reasons at the time when you made these purchases you speak of, of other powder, why you decided to make a change from the Buckeye Powder, than those you have already stated? A. Well, as I stated before, the location of the mills was one; the convenience of getting the powder whenever I wanted it; and the price; and in order to keep the trade I had then, were the main reasons.

Q. You state in order to keep the trade you had 1647
then, what do I understand by that? A. Well, previous to that time, I was gradually losing out on the trade, and in thinking it over with my brother, I decided to tie up with the du Pont people, and in that way retain the trade we had at that time.

Q. Can you state now how many of your customers you had lost; you said you were losing out on the trade? A. You mean to ask the trade whom I sold Buckeye Powder to?

Q. Yes. A. I will begin on the railroad, on the L. & N. I sold the Valley Coal Company; I sold the Belleville and O'Fallon Coal Company; I sold the Glendale Coal Company, and I sold, but not delivered to the Kolb Coal Company—so that really was not a sale. Now, on the Southern Railroad,

there was Louis Michaels. I will take the I. C. Railroad: The Hibberd Coal Company, and the Johnson Coal Company. And on the Electric, I sold Joseph Gest and also Joseph Michaelis, or rather the Superior Coal Company. And on the L. & N. Railroad, I also sold the Summitt and Fullerton Coal Company. That's all.

Q. You say you lost out with these customers, and you decided to go over to the du Pont Company after your experience. Was that the result of com-
1649 petition? A. Yes, sir.

Q. To whom did these customers of yours go, if you know? A. Well, they either went to the Phoenix or to the du Pont Powder Company to my knowledge.

Q. Did any of those companies enter into contracts with the du Pont Company to your knowledge?

By Mr. Katzenbach:

1650 Q. Would you know that from what somebody told you? A. No.

Q. Did you ever see the contract? A. No. You see, I didn't get a chance to answer the question. The only thing I knew, they were buying powder from the du Pont or the Phoenix Powder Company; that they had made a contract with the du Pont Company, I don't know.

By Mr. Abbott:

Q. And this matter of the location of the Phoenix Mill that you have spoken of, the same objection as to the location obtained during the time you were buying Buckeye Powder, as after you had left off buying Buckeye Powder, so far as the lo-

cation was concerned. A. The location was the same.

Q. How far was the du Pont mill from Belleville? A. From the city limits or from our place?

Q. Say, from your place of business? A. Seven miles, six and a half miles I think you can make it.

Q. Now, from what point did you make your deliveries of black blasting powder when you were handling Buckeye Powder? A. From our magazine.

Q. And where was your magazine located? A. 1652
Within a half-mile from the city limits of Belleville.

Q. From what point did you make your deliveries of powder after you began doing business with the du Pont Company? A. Mostly all from the du Pont Mills, not all, but mostly all.

Q. Did you make any charge or profit on account of your using your magazine for handling the Buckeye powder? A. No, sir.

Q. Did you make any charge or profit or receive any benefit from the du Pont Powder Company by 1653
reason of the use of their magazines for making your deliveries? (Objection overruled.) A. Made a profit on the drayage, not on the magazine, but on the drayage.

Q. What was your profit on drayage? A. It must have been between $3 and $3.25; I am not positive on that?

Q. Which way did you figure it in your calculation of your business with the du Pont Powder Company, $3 or $3.25? A. Well, I at the present time I am under the impression it is $3.25, but I may be slightly off on that; that is just as I have it in my mind at the present time.

Q. $3.25, what do you mean? A. Three and a quarter cents per keg.

Q. During the time that you were doing business with the Buckeye Powder Company, were there any changes made in the price of Buckeye Powder so furnished to you? A. From the first time I done business with them until the last?

Q. Yes. A. There was a gradual decline in the price of powder.

Q. To what was that decline due? A. To my mind it was the competition in the field.

1655 Q. You requested a reduction in the price from the Buckeye Powder Company? A. Yes, sir.

Q. Were your requests granted or not? A. They were.

Q. Did you give your reasons for requesting the price from time to time as you made your requests? A. Yes, sir.

Q. Were your requests granted or not? A. They were.

Q. Did you give your reasons for requesting the price from time to time as you made your requests? A. Yes, sir.

1656 Q. Now, Mr. Brechnitz, after you began doing business with the du Pont Powder Company in the year 1906, as you have testified, did you have any further business with the Buckeye Powder Company? A. No; after I ceased doing business with them in 1096, that was the last.

Q. Did you at any time have any further correspondence with the Buckeye Powder Company or did you make any further efforts to enter into business arrangements with them? A. I think I did.

Q. About when was that? A. Well, I suppose it must have been every time when my contract with the duPont expired; I always got into communication with the Buckeye Powder Company.

Q. Do you recall any correspondence or efforts to do business with the Buckeye Powder Company in the spring of 1908? A. Yes, sir.

Q. Did you have correspondence with them at that time concerning the purchase of black blasting powder? A. Yes, sir.

Q. State fully and in your own way how that matter came to be inaugurated and just how it proceeded. A. The way I remember it if I am not mistaken, I had an occasion to come to Springfield on some business, and I wrote Mr. Waddell that I would come and drop off at Peoria, and we talked over the price of powder, and Mr. Waddell was not inclined to make me a price on powder. I think 1658
his reason at that time was that there was an intention to sell out the mill, and, of course, that didn't suit me to any extent because I thought that this fight would come to an end sometime and that business would be more profitable later on; and we talked about the price of powder, and, as I stated before, he couldn't make a price; and later on we got together with a banker, some banker there at Peoria, and we talked over the situation; and I don't know who were the three who made mention about giving me a letter in which they named a
certain price of powder, which was lower than the 1659
one I got from the duPont Powder Company. At the same time the terms of this letter to me were not to be carried out by the Buckeye Powder Company, and Mr. Waddell give me this letter to answer, or to his satisfaction to get me to vote in favor of selling out the mill, the way my recollections are just now.

Q. Have you got that letter at the present time? A. No, sir.

Q. Do you know where it is? A. I think that Mr. Spicer has that letter; at least I think he got it from my place there later on.

Q. It isn't in your possession at the present time? A. No.

1660 Q. Do you know what Mr. Spicer did with it? A. Why he used it in evidence in the case of the Powder Trust, as he told me at that time.

Q. That was the case of the United States of America, Petitioner, against the E. I. duPont de Nemours & Company, et al., then pending in the United States Circuit Court for the District of Delaware? A. Yes.

Q. Now, I show you the record in that case, the defendants' record of exhibits, Volume 1, on page
1661 339, and I refer you to this exhibit, that is, defendant's Exhibit 192 (Plaintiff's Exhibit 1213) and I ask you to read it and state whether or not that is a correct copy of the letter which you have already testified to? A. That appears to be correct, to my mind.

Q. After that letter was given to you, did you have any further correspondence; did you have other correspondence with Mr. Waddell regarding this same transaction which you have testified to; when I say "Mr. Waddell" I mean the president of
1662 the Buckeye Powder Company? A. I don't catch the point just now; if you lead me into it, I can tell you.

Q. A while ago you testified you had written Mr. Waddell, stating that you were in the market for powder and that that led up to your meeting in Peoria. I want to show you a paper writing on the letter head of the Brechnitz Brothers Mercantile Company, dated Belleville, April 2, 1908, and ask you whether or not you recognize the handwriting, and, if so, whose is it? A. Yes, sir; that is my handwriting.

Q. Did you get an answer to that letter? A. Yes, sir; I got an answer to that letter.

Letter offered and received in evidence as

Plaintiff's Exhibit, filed and read to the jury as follows:

"Brechnitz Brothers, Merc. Co., Bellville, Ill., April 2, 1908. Buckeye Powder Company, Gents: I am in the market for a year's contract of powder. As I will be in Springfield between the 12th and 14th of this month I could take a run to Peoria and see you, or if you will come to St. Louis in the next week I can meet you there. Quite a few 1664
powder companies came to see me in the last few days and therefore would like to get this off my hands. Will use between 15,000 and 20,000 kegs.

Respectfully,

Brechnitz Bros. Mer. Co.,
D. B."

Q. Have you got the answer that you received at that time to the paper which has just been offered? A. I think I also gave that to Mr. Spicer. 1665

Q. Do you know where it is; have you ever received it back? A. No.

Q. I show you Defendant's Exhibit No. 193 (Plaintiff's Exhibit 1214) in the same volume of the record which I have already called your attention to; state whether or not that is a letter addressed to you by Mr. R. S. Waddell, President of the Buckeye Powder Company, under date of April 10, 1908? A. Yes; I guess that letter was written to me all right.

Q. Immediately following that, I call your attention to Defendant's Exhibit No. 194 (Plaintiff's Exhibit 1215) in the same record book, and ask you to examine the same and state whether or not that is a copy of a letter written to you by Mr. R. S.

Waddell, President of the Buckeye Powder Company, on May 13, 1908? A. That seems to me another letter.

Q. I now call your attention to Defendant's Exhibit No. 195 (Plaintiff's Exhibit 1216) on page 342 of the same book, to which I have already called your attention, and I ask you to examine the same and state whether or not that is a letter received by you from Mr. R. S. Waddell, President of the Buckeye Powder Company? A. That seems to be another
1667 letter I received.

Q. I call your attention to Defendant's Exhibit 196 (Plaintiff's Exhibit 1217) on page 343 of the same volume of the record, to which I have just called your attention, and I ask you whether or not you recognize the same as a document which you have had at any time in your possession? A. Yes, sir; I had that in my possession.

Q. With reference to Defendant's Exhibits of Nos. 192, 193, 194, 195 and 196 (Plaintiff's Exhibits 1213, 1214, 1215, 1216, 1217), which you have
1668 just examined and stated are correct copies of the documents which were at one time in your possession. I will ask you to state how those papers passed out of your possession and into whosoever possession they did pass, if you know? A. As far as I remember, Mr. Spicer asked me if I couldn't show him some of my correspondence with the Buckeye Powder Company, and, being with the duPont Company, I frankly consented to aid him in this way. I am sure I didn't expect this here, either.

Q. You gave him access to your files? A. Yes, sir.

Q. And he took from your files such papers as he pleased, did he? A. Yes, sir.

Q. You have not seen these documents from the time you turned them over until the present time,

when you examined this record? A. Not to my knowledge.

Q. They have never been received back by you? A. Not to my knowledge.

Q. I will ask you to state whether or not you have a letter dated March 13, 1905; you have such a letter? (Witness is shown letter.) A. I think I have such a letter.

(Documents offered and received in evidence as Plaintiff's Exhibits 1213 to 1217 1670
and read to the jury as follows:)

Plaintiff's Exhibit 1213.

"Memorandum made April 10th, 1908, between Buckeye Powder Company and Brechnitz Bros. of Bellville, Illinois.

Buckeye Powder Company has quoted and offered Brechnitz Bros. this date their supply of powder for one year estimated from 15,000 to 20,000 kegs, at one dollar per keg, delivered at Bellville, Illinois, in carload lots, terms 30 days or 2% discount for cash in 10 days, the above to be ac- 1671
cepted by Brechnitz Bros. on or before May 10th, 1908.

For the purpose of aiding Brechnitz Bros. in obtaining a better price from others, should they deem it desirable to use the letter for that purpose, the Buckeye Powder Company has to-day written an offer to Brechnitz Bros. of ninety-five cents per keg in carloads delivered at Bellville, the purpose being to have such letter used with other Powder Companies, and not to carry out its terms for the Buckeye Powder Company.

Signed by the parties this date.

Buckeye Powder Co.,
By R. S. Waddell, Prest.
Brechnitz Bros. Mer. Co.,
By Emil Brechnitz."

Plaintiff's Exhibit 1214.

Peoria, Illinois, April 10th, 1908.

Brechnitz Bros.,
Belleville,
Ill.

Dear Sirs:

We have not had the good fortune to share any
1673 of your business for the past year, and knowing that your contract with others expires this month or the first of next, we desire to make you an offer on your contract of 95 cents per keg in car loads delivered at Belleville, Illinois, terms 30 days or 2% discount for cash in 10 days, from date of Invoice.

We are quite anxious to enter the Belleville district and of course would prefer to do this through you. Please let us know when you will be ready to close your contract for next year.

Truly yours,

1674

(Signed) Buckeye Powder Company,
R. S. Waddell,
President.

Plaintiff's Exhibit 1215.

Peoria, Illinois, May 13th, 1908.

Messrs. Brechnitz Bros.,
Belleville,
Ill.

Dear Sirs:

At the time you called at our office about three weeks ago, the best offer you then had from the

DuPont Company through Mr. Spicer was a price of $1.10 less a rebate of 8 cents per keg, making $1.02 net. Have they made you any better offer since that time and what are the prospects of your relying on us for powder? We want to get our mills started in operation next week and desire to plan ahead to cover our requirements. I presume as the mines have not been in operation you still have a good stock of powder on storage. About how long will this stock run you.

1676

Truly yours,
(Signed) Buckeye Powder Company,
R. S. Waddell,
President.

Plaintiff's Exhibit 1216.

Peoria, Illinois, June 3rd, 1908.

Messrs. Brechnitz Bros.,
Belleville,
Ill.

1677

Dear Sirs:

In your last letter to me you stated that you expected to obtain from the DuPont Company a price of 95 cents per keg for powder delivered to you at Belleville, subject to 2% discount for cash in 30 days and you hoped to get a reply I think a week ago last Wednesday.

Did they make you the 95 cent price on these terms and have you closed your contract with the DuPont Company for your supplies for another year on this basis? If you did not obtain the 95 cent price, have you closed the contract, and if so, at what figure and terms? I hope that our competition has been of some aid to you.

I understand the mines in Southern Illinois are

not operating strongly and you are probably supplied with powder for at least another month. We found it necessary to start our mills about 10 days ago to take care of the trade that is depending on us for supplies. Will be glad if you would give my full advices of your arrangements and I hope they have been closed and are entirely satisfactory to you. If the Buckeye Powder Company cannot serve you, the determination of the DuPont Trust
1679 to shut it out of the trade is an inducement to obtain for you a heavy concession from the established prices of the Trust.

Truly yours,

(Signed) R. S. Waddell, Prest.

Plaintiff's Exhibit 1217.

Our Order 889 Peoria, Illinois Oct. 4th, 1905.
Your order—8/4/05

C. G. Brechnitz,
Belleville, Ill.,

1680

Bought of Buckeye Powder Company
Blasting Powder, Dynamite
and Fuse

Terms: Usual Folio 196

CCC CC C FFF FF F

800 Kegs	800 92 cts. per keg	736 00
	O. K.	14 72
	R. S. W. Jr.	
	Treas.	721 28
	(Mutilated)	52 80
		668 48

Via Peoria Ill. Cen
Car No. M. P. 19149

(Plaintiff's Exhibits P-67 and P-68 were offered and received in evidence and read to the jury.)

Q. I call your attention to plaintiff's identification 66, which was Defendant's Exhibit 196 (Plaintiff's Exhibit 1217) in the record to which I called your attention a while ago, and I ask you to examine the same and say what figures, if any, upon that document were made by you? A. I think this is the same bill I saw the other day with the gentle- 1682
men.

Q. To whom do you refer? A. Mr. Spicer and Mr. Katzenbach—$14.72 are my figures and the $721.28 are my figures. I could tell better from the original, than from seeing it in print here.

Q. Are those all the figures that were made by you? A. For both parties concerned, I think that I really, to clear this up, ought to explain this bill here.

Q. Make your explanation in regard to that "identification 66." A. It seems to me that I orig- 1683
inally got a bill from the Buckeye Powder Company, 800 kegs at 94c less 2% for cash, and in the meantime I wrote Mr. Waddell for a better price, and I think I received a reply from Mr. Waddell that he would change it to 92c and deduct 2% for cash.

Q. Was that per cent. allowed? A. I think Mr. Waddell later on sent me a statement for $14.72.

Q. And that was paid by you? A. I had to pay it later on; yes; I was under the impression that the usual terms would be applied, but he must have had in mind to make a ninety-two cent net price.

Q. Do you recall the company known as the Dutch Hollow Coal Company? A. Yes.

Q. Was or was not that one of your customers? A. It was one of my customers.

Q. Do you recall the Little Oak Coal Company?

Q. Was or was not that one of your customers? A. Yes, sir.

(Objection overruled.) A. Yes, sir.

Q. Do you recall the Boehmer Coal Company? A. Yes, sir.

Q. Was or was not that one of your customers?

1685 (Objection overruled.) A. The Boehmer Coal Company, I didn't sell the Boehmer Coal Company, as to the Boehmer Coal Company; I sold the Michaelis.

Q. Mr. Brechnitz, in order to cover one point a little more clearly, I would like to ask you whether from time to time, you became advised of better prices and cuts in prices, which were made by your competitors, as you have testified you notified Mr. Waddell for the Buckeye Powder Company of these cuts and requested him to make a better price to you on account thereof? (Objection overruled.)

1686 A. You asked if I advised Mr. Waddell?

Q. Yes. A. Yes, I advised him.

Cross-examination by Mr. Katzenbach:

Q. Mr. Brechnitz, you have referred in your testimony to a trip that you took to Peoria, Illinois, and there you met Mr. Waddell and a banker, I think? A. Yes, sir.

Q. Do you recall whether the banker you met was Mr. Ferdinand Luthy? A. Yes, sir; I think that is the name.

Q. At that interview they desired you as a stockholder, to vote for some action to be taken by the stockholders of the Buckeye Powder Company? A. Yes, sir.

Q. And were you opposed to that action being taken? A. Yes, sir.

Q. So that it was then arranged that you should be given a letter under date of April 10, 1908, making an offer to deliver you powder at 95 cents at Belleville, Illinois, terms thirty days and two per cent. discount for cash in ten days, was it not? A. Yes, sir.

Q. And at the same time it was also agreed and arranged for, that this price was not to be binding upon the Buckeye Powder Company? A. Yes, sir. 1688

Q. It was not? A. No.

Q. And that was done in order for you to obtain a better price from other manufacturers of powder? A. Yes, sir.

Q. And this was assented to by the Buckeye Powder Company, was it not, through its office? A. Yes, sir.

Q. And this was arranged in the presence of Mr. Luthy, I take it? A. Yes, sir; but the conference came to an end, and the letter was drawn up afterwards, and Mr. Luthy came there afterwards. 1689

Q. He assented to it in the conference? A. Yes, sir.

Q. The purpose of this was to have the Buckeye Powder Company quote you a price for powder which it was not their intention to deliver to you at that price? A. Yes, sir.

Q. Now, Mr. Brechnitz, your attention was called to a printed copy of a bill dated October 4, 1905, and marked Plaintiff's Exhibit 1217; will you just take that in your hand, and state whether or not that was a bill that was originally 94 cents, and that you made the change to 92 cents? A. As I stated before, that is the case, as I have it in my recollection now.

Q. That is the case you have in your recollection? A. Yes, sir.

Q. Now, then, I show you a bill dated August 29, 1905, for 800 kegs of Buckeye Powder, from the Buckeye Powder Company, and ask you whether or not that is the bill you have reference to? A. (After having been shown) "D-10 for Identification," yes, sir.

Q. Then you are mistaken, Mr. Brechnitz, in your testimony which you gave on your direct examination that that was the bill in which the change had been made by you? A. Yes, sir.

1691 Q. This is the paper? A. Yes, sir.

Q. And in this bill of October 4th, 1905, the item of $52.80, which has been deducted from the two per cent discount had been deducted, was for freight, I presume, that you had paid? A. Yes, sir.

Q. Then you had powder delivered to you in the fall of 1905, at 92 cents, less a discount of 2 per cent for cash, at your powder magazine by the Buckeye Powder Company, did you not? Well, it appears so here, but I may be mistaken; I am not positive on that point.

1692 Q. That bill refreshes your recollection, that the Buckeye Powder Company did deliver powder to your magazine at 92 cents per keg in the fall of 1905? A. As I said before, in reference—

Mr. Taylor: We will admit that we sold 800 kegs of powder to Mr. Brechnitz on October 4, 1905, at 92 cents net.

Mr. Katzenbach: We do not admit that at all.

Q. As a matter of fact, while you were dealing with the Buckeye Powder Company in the fall of 1905, the Buckeye Powder Company delivered to you powder at the magazine, at 92 cents per keg, did it not? A. Yes, sir.

Q. Now, then, in the month of March, 1906, you have referred to a conversation you had with Mr. Spicer, relative to the purchase of du Pont Powder, I think, have you not? A. Yes, sir.

Q. You have also stated that you called Mr. Spicer on the telephone? A. Yes, sir.

Q. And that owing to the shortage of powder in your magazine, you desired to purchase 400 kegs of the du Pont Powder Company? A. Yes, sir.

Q. And that the price you paid for that was $1.05 per keg? A. Yes, sir. 1694

Q. Now, then, you were the one who called up Mr. Spicer? A. Yes, sir.

Q. Now, then, your reason for doing that was because the Buckeye Powder Company could not supply you with the amount of powder you wanted? A. At that time, yes, sir.

Q. And you have also stated, I think, that there were other reasons that prompted you to desire to purchase powder of the du Pont Powder Company, have you not? A. Yes, sir.

Q. And I presume one of these reasons was that 1695
the powder was more satisfactory to many of the miners in the conditions at Belleville? A. Some places it was and some places the Buckeye Powder was not objected to.

Q. But in some places Buckeye Powder had been objected to? A. Yes, sir.

Q. Among your former customers? A. Yes, sir.

Q. And that was one of the reasons you had not been able to sell to your customers—— A. No.

Q. What was it? A. The main reason was the cut in price.

Q. You mean to say that you, as a commission man, had to have a price from a powder company and be able to sell it at an advance, is that it? A. Surely; I couldn't handle it for nothing.

Q. Now there were other powder companies that called upon you during this time to sell powder? A. Yes, sir.

Q. You had calls from agents of the Equitable Powder Company, I suppose. A. I can't recall the Equitable just now, but I can recall Mr. J. L. White, and also the agent for the Barron-Halley people, Hoyt.

Q. What company did Mr. Hoyt represent? A.
1697 The American Powder Company.

Q. You had representatives of the Miami Powder Company call upon you? A. That is the same as the American.

Q. And of the Egyptian Powder Company? A. No. I did have a quotation or correspondence from Kansas, from Gorham.

Q. From the Excelsior Powder Company? A. Yes, sir.

Q. Did you have any agents of the King Powder Company call on you? A. No, sir.

Q. Did you have any representative of the Aus-
1698 tin Powder Company call upon you? A. That was Mr. White.

Q. You sold powder out of your powder magazine I suppose to certain customers? A. Du Pont or Buckeye Powder?

Q. Both; the Buckeye powder you sold from your magazine? A. Yes, sir.

Q. When you sold Buckeye? A. Yes, sir.

Q. And did you ever fill any orders of du Pont Powder from your magazine? A. Yes, sir.

Q. Now, then, you had powder delivered to your magazine for 92 cents by the Buckeye Powder Company? A. Yes, sir.

Q. And after that you had powder delivered to your magazine, immediately afterwards, by the du Pont Company, at $1.05? A. Yes, sir

Q. Did you ever have any powder delivered to your magazines by the du Pont Powder Company at as low a price as 92 cents? A. Well, of course, the conditions of that are in this contract.

Q. Did you ever have any? A. On the face of it. It was not a 92-cent price.

Q. During the year 1905, couldn't these people that you have called customers of yours, like the Hibberd Coal Company and the Superior Coal Company, and the Summit and Fullerton Coal 1700
Company, buy powder from the various manufacturers in the open market as cheap as you could purchase it? A. During the year 1905?

Q. During the latter part of 1905 and the early part of 1906. A. Let's see—when did I state my first contract started with the du Pont concern?

Q. You first purchased of the du Pont concern in the month of March, 1906? A. Now, put your question to me.

Q. At the time, or immediately prior thereto, that you commenced to do business with the du Pont Company, did not these various coal com- 1701
panies which you have mentioned as your customers have by various powder companies, quotations so that they could buy powder in the open market practically as cheap as you could? A. I suppose they could.

Q. And that was a time when most of the coal companies were buying powder in the open market, were they not, from various powder companies? A. I don't know that; I suppose they could.

Q. These letters that you got from the Buckeye Powder Company which were not to be binding upon the Buckeye Powder Company were used by you in endeavoring to get a lower price for powder, were they not? A. Certainly; that's what they were for.

1702 *Re-direct examination by Mr. Abbott:*

Q. Mr. Brechnitz, you stated a moment ago that on the fact of it your contract price was 95 cents, with the du Pont Powder Company, is that correct? A. Yes, that's right.

Q. Now, what did you mean by on the face of it? A. Well, of course, I figured that the drayage to me had to be taken into consideration as far as price was concerned; I received a drayage when-

1703 ever I made a delivery of a load of powder.

Q. What did that amount to? A. Between three and three and one-quarter cents.

Q. And you figured that that entered into the cost of the powder to you? A. Yes, sir.

Q. How did you arrive at your conclusion, that the price which you obtained from the du Pont Company was a better price than the price which you had been receiving from the Buckeye Powder Company. (Objection overruled.) A. Why, if I take 100 kegs of powder to a mine out of my maga-

1704 zine with Buckeye Powder, I would say I am making $8 on this trip to the mine, the difference between 92 cents and a dollar; if I get an order from this same mine for du Pont Powder, I am taking this powder from the du Pont magazine and hauling it to this mine, on which I am making $5, the difference between $1 and 95 cents, and three or three and a quarter dollars, making a profit on that trip of $8 or eight and a quarter.

Q. Did you get any discount for cash on your arrangement with the du Pont Company? A. Two per cent cash.

Q. And as I understand it, your price for Buckeye powder was 92 cents net? A. That is what is in my mind.

Re-cross examination by Mr. Katzenbach:

Q. Mr. Brechnitz, when there was a bill rendered to you by the du Pont Powder Company for powder under this contract which you have spoken of, as having been at 95 cents per keg, was the bill rendered to you for 95 cents per keg, whether you were the drayman or not? A. The bill was rendered at 95 cents.

Q. And then, did you render bills to the du Pont Company for any drayage that you would perform 1706
for the du Pout Company? A. Yes, sir.

Q. And they would pay you for that drayage? A. Yes, sir.

Q. Now, then, if the drayage, if you desired 100 kegs of du Pont powder delivered to your magazine, and the du Pont Company delivered it there without your teams hauling it, what was the price? A. 95 cents.

Q. Now, then, will you say that during the year 1906 that the amount of drayage per keg was not three cents? A. As I stated I am not positive on that. 1707

Q. The bills which you rendered to the du Pont Company for drayage would determine that, would they not? A. They would.

Q. Are you not mistaken when you say that the bills from the Buckeye Powder Company were not subject to two per cent discount for cash? I. read from a letter of March 13, 1907, which you have stated was signed by Mr. Waddell, and addressed to Mr. C. G. Brechnitz, Belleville, Illinois, in which the statement is made: "Our rate of freight is 6¾ cents per keg, and the best we could do would be 92 cents per keg delivered at Belleville, subject to two per cent discount for cash?" A. When was that written?

Q. Do you recall that? A. Since I made that one mistake, I want to be a little more careful.

Q. I want to test your memory; will you state whether or not that is so? A. Yes, I think I recall receiving that letter.

Q. Will you say your never got the benefit of two per cent discount for cash from the Buckeye Powder Company? A. As I have it in my mind, sometimes they made a net price to me and sometimes they made a price and allowed a discount.

1709 Q. Now, then, I think you stated, did you not, on your direct examination, that one of the reasons which influenced you to desire to procure powder from the du Pont Powder Company was the irregular deliveries of the Buckeye powder and their inability to furnish you powder at the time? A. Sometimes I had to wait for the powder.

Q. And you thought it was more convenient for you to get it at the Belleville plant? A. More convenient; yes, sir.

Q. And that was the real reason why you made
1710 the change, was it not, because it was more convenient for you? A. The real reason was, that I wanted to keep the customers.

Q. And you could keep them better with the du Pont powder than the Buckeye? A. I am not complaining about either one.

Q. But you thought you could keep them better with the du Pont than Buckeye? A. No, I wouldn't say that.

Q. Then why did you change to du Pont? A. As I stated before, I didn't care about losing the trade I had, because of this competition in the price, I nearly had to get out of the business.

Q. After you purchased Buckeye powder, were you induced in any way by the du Pont Powder Company or any of its agents or representatives

to cease the purchase of powder from the Buckeye Powder Company? A. No.

Q. You have spoken of the Kolb Coal Company as being one of your customers; didn't the Kolb Coal Company cancel an order for Buckeye powder, by reason of the failure of the Buckeye Company to deliver it? A. Yes, sir.

Re-direct examination by Mr. Abbott:

Q. I show you the letter dated March 13, 1907, 1712
concerning which counsel for the defendants interrogated you a few moments ago, marked as Plaintiff's Exhibit 67, and I ask you to look at the name and state whether or not you were doing business with the Buckeye Powder Company at that time? A. No, sir; I was not doing business with them at that time.

Q. Now, in answer to the last question which was propounded to you by counsel for the defendants, which you answered in the negative, how did you arrive at that conclusion? (Stenographer repeats the question) A. I answered "No;" there was no 1713
one come and induced me to quit buying from the Buckeye.

Q. Do I understand you to mean that no one came and personally asked you to stop buying? A. Yes, sir.

Q. But you don't wish to retract anything you said about these other methods as to competitive prices? (Objection overruled) A. Those were the main reasons.

1714 *Emil Brechnitz—Recalled—Direct*

Deposition of EMIL BRECHNITZ, a witness recalled on behalf of the Plaintiff, was read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Brechnitz, at the time when you gave your former testimony in this matter, I neglected to ask you the question with regard to the number of kegs of powder which you purchased from the du Pont Powder Company after you ceased doing business
1715 with the Buckeye Powder Company. Will you kindly state now how many kegs of powder you have purchased from the du Pont Powder Company of du Pont powder since you ceased doing business with the Buckeye Powder Company? A. Now, let's see—

Q. Down to September 19, 1908? A. Now, the number of kegs that I purchased for myself I think amounts to about 8,000 kegs.

Q. Have you made any other purchase of anyone else, under your contract with the du Pont Powder
1716 Company, during that period? A. The Prairie Coal Company was included in my contract, although they bought direct.

Q. Under your contract with the du Pont Powder Company? A. Yes, sir.

Q. And you receive the same commission on powder which was purchased by the Prairie Coal Company as you do for powder which is purchased by yourself? A. I think you are getting that a little bit too complicated for me. I really don't recollect; I had a contract with the du Pont Powder Company, and just at the present moment I don't know whether they made me a net price without commission, or made me a price with commission; but at any rate, I received a commission on powder they billed to the Prairie Coal Company.

Q. You received that on the total number of kegs which you purchased from the du Pont Powder Company after you ceased doing business with the Buckeye Powder Company, down to September 19, 1908? A. I received the commission they billed to the Prairie Coal Company under my contract.

Q. What was the total number of kegs that you bought in your own name from the du Pont Powder Company and that was sold to the Prairie Coal Company on your account? A. Somewhere between twenty-two and twenty-three thousand kegs of powder was the total amount of powder. 1718

Q. Did you buy powder that was used by the Prairie Coal Company from the Buckeye Powder Company previous to your going over to the du Pont powder? A. Yes.

Q. How was that powder billed at that time? A. I billed that.

Q. So that when you went to the du Pont Powder Company you simply changed the manner of billing the powder which you received on behalf of the Prairie Coal Company? A. That's all. 1719

FRANKLIN W. OLIN was called for plaintiff, and, having been duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Olin, where do you reside? A. Alton, Ill.

Q. How long have you resided at Alton? A. Since 1902—I beg your pardon, 1892.

Q. 1892. What is your business, and what has been your business while residing at Alton? A. I have been engaged in the manufacture of powder and ammunition, and powder-making machinery.

Q. What particular company have you been operating at East Alton? A. The company I have been connected with the longest time there is the Equitable Powder Manufacturing Company.

Q. When was the Equitable Powder Manufacturing Company organized? A. I should say late in the year of 1891.

Q. Since you have been engaged—this Equitable Powder Manufacturing Company is engaged in manufacturing black blasting powder, I believe? A.

1721 Yes, sir.

Q. And has been during the entire period of its existence? A. It has at various times manufactured rifle powder.

Q. Do you know anything about an organization which was sometimes called the Gun Powder Trade Association, or an association between the explosives manufacturers? A. I know of an organization or association of the powder manufacturers, but I would not be able to state definitely that it was the Gun Powder Association.

1722 Q. What did you understand the name to be of that association; what was it called? A. Well, it was changed from time to time, as I recall the history, and I cannot give you the various names, but originally I understood it was called the Gun Powder Association.

Q. Yes, and how long did it continue to be known by that name? A. Well, my last knowledge of it was in 1903.

Q. Was the Equitable Powder Company a member of the association at any time? A. Yes, sir.

Q. When did it become a member of the association? A. Late in the year of 1896.

Q. Do you know anything about a system of rules or regulations which served to regulate the business of that association, known as the Compendium of

Rules? A. Why, I recall that they had a Compendium of Rules.

Q. Did you yourself ever have a copy of that document? A. I think we did.

Q. Have you got such a copy now? A. No, sir.

Q. What became of it, if you know? A. Well, I am not able to state definitely, but we lost our office by fire in 1900, and lost nearly all our records, and I am of the opinion that it was burned up in that fire.

1724

Q. Did you at any time receive any record or memoranda of any sort, concerning what was transacted at the various meetings of this association? A. We used to receive minutes of the transactions.

Q. Have you any of those minutes now? A. No, sir.

Q. From whom did you receive the minutes? A. Why, generally I think Edward Green was the secretary of the organization, during the greater part of our connection with it.

1725

Q. During the time that you were a member of the association—that your company was a member of the association—did you at any time ever make application to the association for the privilege or permission to enter into contracts with your various customers? A. I think so.

Q. Can you recall of your independent recollection whether or not you made any such applications for such contracts as you made? A. Not specifically; no, sir.

Q. Did you make on or about the 15th day of February, 1900, through the permission and authorization of the association, a contract with the Big Muddy Coal & Iron Company of St. Louis? A. The Big Muddy Coal & Iron Company have been customers of ours for a long time, but I could not

say in what manner we applied for permission to make a contract.

Q. If you made a contract with them at this time that I have indicated—you were a member of the association, were you, at that time? A. In 1900?

Q. Yes. A. Yes, sir.

Q. Did the Compendium of Rules—of the rules which governed that association—require that before you made contracts with your customers, you should make application for permission? A. Not
1727 necessarily that we should.

Q. Not necessarily? A. No.

Q. What were the conditions under which you could make contracts without applying to the association? A. It was customary for the members to report any contracts that they made to the association, but not necesary to obtain permission to make the contract.

Q. Was it necessary to obtain authorization or ratification after the contract was made? A. It was customary for contracts to be ratified by the
1728 association, but it was left to each member to conduct his business, so far as making the contract or not making it, or at the price they would make it, as somewhat their own discretion.

Q. Now, then, suppose you made a contract without the authorization of the association, was there any penalty attached to the making of such contracts? A. Not in the connection of making the contract; no, sir.

Q. But suppose there was some violation of the rules of the association concerned in making that contract, then would there be a penalty attached to the making of the contract? (Objected to and objection overruled.) A. I would not say that it would be in violation of any rule.

Q. I will ask you to say whether or not there was

any regulation in any way by the association which affected the amount of sales that you could make within a given period to your customers? A. No, sir.

Q. Was there any provision with reference to undersales or oversales? A. Yes, sir.

Q. To a certain stipulated amount? A. Yes, sir.

Q. Now, then, if you oversold a certain amount, the amount which was allotted to you, was any penalty attached to that? A. Yes, sir.

Q. What was that penalty? A. It varied from 1730
time to time.

Q. Did you at any time, during the existence of your membership in the association, make any payments to the association on account of oversales? A. Yes, sir.

Q. Do you know what was the total amount—or when those payments were made, and what the total amount was? A. I cannot remember the date of the payments.

Q. I show you Government's Exhibit No. 216, Volume 4, of Petitioner's record of exhibits in 1731
what is known as the Government case, and ask you to examine that, and state whether or not you had anything to do with that document.

A. I should say that this is a copy of a statement that we supplied at our office.

Q. And do you recall whether or not you furnished that to the Government at that time? A. I think I did.

Q. Will you state generally what that relates to? A. This shows the different amounts that we paid at various times to the association on account of overselling our quota.

(The paper offered and received in evidence and marked Plaintiff's Exhibit No. 1222, of this date.)

Mr. Abbott: Your Honor, this statement shows that from April 8, 1897, to February 24, 1904, inclusive, the Equitable Company paid out as penalties $105,734.46, and received as receipts for undersales $11,761.36.

Q. Now, was there anything in any of the terms of the contracts which you made with your various customers that were in any way regulated by the association? A. I think not.

1733 Q. In matters of terms you were to act independently? A. Yes, sir

Q. Have you any of those contracts at the present time, Mr. Olin? A. I cannot say without searching. I should think it rather doubtful, as our records in 1905 were under water, the greater part of them, and were destroyed by that means, and at the time of the Government case I was unable to find but very few of the papers that they asked for.

Q. To the best of your knowledge, then, all of these original contracts have been destroyed, they

1734 are not accessible? A. I might be able to find some, but I am not positive about that.

Q. Do you recall whether you had a contract during the period that the Equitable Company was a member of the association with the Kansas & Texas Coal Company of Missouri? A. I think so.

Q. And the Madison Coal Company of St. Louis, Missouri? A. Yes, sir.

Q. And the Mowequa Coal & Manufacturing Company of Mowequa, Illinois? A. Yes, sir.

Q. The Sorento Coal & Mining Company of Sorento, Illinois? A. Yes, sir.

Q. The Scripps Coal Company of Astoria, Illinois? A. I should say that they were one of our contract customers.

Q. The Tavern Rock Sand Company, Klondike, Missouri? A. Yes, sir.

Q. The Rich Hill Coal Mining Company of Rich Hill, Missouri? A. Some of their mines were under contract with us, not all of them.

Q. Do you recall any of the terms of any of those contracts? A. Not definitely; no, sir.

Q. Did you have any knowledge of the company known as the Phoenix Powder Manufacturing Company? A. Yes, sir.

Q. Was that company at any time a member of the association? A. Yes, sir.

Q. What relation, if any, did you sustain to 1736
that company during the time it was a member of the association? A. I was president of the Phoenix Company for seven years, and during that time it was a member of the association. I don't know after I severed my connection with it as to whether it continued or not.

Q. When did you sever your connection with it? A. I offered my resignation April 1, 1903.

Q. Then for seven years previous to that, to your knowledge it was a member of the Association while you were president of it? A. Yes, sir.

1737

Q. Do you know whether that company made any contracts through the authorization of the Association?

A. The Phoenix Company made their contracts in the same manner as the Equitable. They were at liberty to make contracts with their customers as they saw fit, and would report those contracts generally to the Association.

Q. And were they bound by the same rules as to oversales and undersales? A. Yes, sir.

Q. And they were compelled to make payments, and to your knowledge did they make any payments during that period? A. In the early part of my connection with them they were undersellers.

Q. Then they received money instead of paying money? A. Yes, sir.

Q. During the latter part of your connection how was it? A. They were oversellers to some extent.

Q. In that case they made payments on account of their oversales? A. Yes, sir.

Q. Do you recall what the penalty was per keg for an oversale? A. I cannot.

Q. Can you recall what the profit was, if you must call it such, for being an underseller, per keg? A. No, sir.

1739 Q. Do you have any recollection of any contracts that the Phoenix Company made with any of its customers during that period? A. It would be pretty hard for me to name the customers now.

Q. I will ask you if you know anything about Davidson & Fulton, Sparta, Illinois? A. I cannot identify them as customers of the Phoenix.

Q. Do you know anything about the Western Anthracite Coal & Coke Company at Duquoin, Illinois? A. The name is familiar to me as a coal operating company in Southern Illinois, but I know nothing in detail of their relation to the Phoenix.

1740 Q. The Illinois Fuel Company, Sparta, Ill.? A. No, sir.

Q. Do you know anything about an agreement called the "Foreign Agreement," or the "European Agreement"? A. I recall something of the history of hearing of that agreement.

Q. Did you have anything to do with any matter connected with the agreement known as the "Foreign Agreement"? A. Yes, sir.

Q. What was that? A. I cannot give you the details of the agreement, I don't know that I ever saw the agreement.

Q. I know, but what part was it—what did you have to do with that agreement? A. I think that we paid certain sums under what we understood was an agreement.

Q. Known as the "Foreign Agreement"? A. Yes, sir.

Q. To whom did you make those payments? A. I think originally to Eugene du Pont.

Q. Afterwards to whom? A. T. C. du Pont, as I recall it.

Q. Have you any memoranda at the present time, which would enable you to state what amount you paid on account of the "Foreign Agreement"? A. I think those amounts are in our books.

1742

Q. I show you Government Exhibit 215 in Vol. 4 of Petitioner's record of exhibits, and also Government's Exhibits 218 to 225 inclusive, and ask you to state whether or not those documents have any reference to payments which you made to either of the parties whose names you have given, on account of the "Foreign" or "European" Agreement? (Objected to and objection sustained.)

Q. Do you know anything about those documents, the numbers of which I have read to you, Mr. Olin? A. May I ask what the numbers of the exhibits are? I have 215 before me.

1743

Q. All of them right along there, 218 to 225, inclusive. A. I recognize these exhibits. 215 is a statement of the amounts that we paid to Eugene du Pont or T. C. du Pont.

Documents offered and received in evidence and marked Plaintiff's Exhibits 1223, 1224, 1225, 1226, 1227, 1228, 1229 and 1230, respectively, and read to the jury as follows:

1744 *Franklin W. Olin—Direct*

The Equitable Powder Manufacturing Co.,
Powder Manufacturers.

East Alton, Ill., Dec. 15, 1908.

Mr. F. W. Olin, President,

Addressed.

Dear Sir:—

1745 Relative to letters relating to European agreement I am unable to find anything in our files pertaining to this matter. I did find, however, in looking over our accounts that we have made the following remittances which are chargeable to this particular account:

March 8, 1898	$ 261.60
Sept. 27, 1899	656.83
Sept. 29, 1900	1202.94
" 30, 1901	1348.82
" 25, 1902	1031.78
1746 Oct. 15, 1903	291.81
Sept. 29, 1904	449.05
Nov. 11, 1905	826.06
	$6068.89

Yours truly,

(Signed) J. H. Moulton,
Sec'y.

Wilmington, Del., Sept. 11, 1900.

Mr. F. W. Olin, Presdt.,

Equitable Powder Mfg. Co., St. Louis, Mo.

Dear Sir:—

It is necessary that I make a remittance to Europe on the 3rd Proximo, and in order that the funds may be in my hands, I will be much obliged to you if you will, at your earliest convenience, send me the proportion due by your company on Black Powder; namely, $1202.94. 1748

Yours very truly,

(Signed) Eugene du Pont,
Chairman.

Sept. 13, 1900.

Mr. Eugene du Pont,

Wilmington, Dela.

Dear Sir:—

Yours of the 11th in reference to remittance for the respective proportions on foreign matters received, and the same will have prompt attention. On account of the loss of our office by fire on Sunday night, and the loss of three wheel mills last night, I will have to ask for a little time in which to give attention to this matter, but will have the funds reach you before the third proximo. The matter of office fire and wheel mill explosion will be more fully discussed when I see you. The former was due either to railroad sparks or spontaneous combustion, and the latter to loose bolt in the wheel mill. 1749

Yours truly,

President.

1750 *Franklin W. Olin--Direct*

Wilmington, Del., 20 Sept., 1900.

The Equitable Powder M. Co.,

Mr. F. W. Olin, Pdt.,

East Alton, Ill.

Dear Sir:—

1751 Your letter of 18th instant has been received, enclosing N. Y. exchange for $1202.94 to pay your Company's proportion of matter referred to in my letter of 11th instant.

Yours truly,

(Signed) Eugene DuPont,
Chairman.

Sept. 18, 1900.

Mr. Eugene DuPont,

1752 Wilmington, Dela.

Dear Sir:—

With this you will find New York draft for $1202.94 in response to yours of September 11th.

Yours truly,

President.

E. I. DuPont de Nemours & Co.,

(President's Office.)

Nov. 6, 1905.

The Equitable Powder Manufacturing Co.,
East Alton, Illinois.

Gentlemen:—

We have not as yet received your check for $826.06 which is now a month over due and about which we have written several letters. I presume you have overlooked this. We would thank you for remittance. 1754

Yours very truly,

(Signed) T. C. DuPont,
Chairman.

E. I. du Pont de Nemours & Co.,

(President's Office.)

Wilmington, Delaware, Oct. 18, 1905. 1755

Equitable Powder Mfg. Co.,

East Alton, Ill.

Gentlemen:—

I have not as yet received remittance from your Company for the amount due for the year 1904 to the European Companies about which I wrote you under date of Sept. 11th. The amount due from your Company is $826.06.

Yours truly,

(Signed) T. C. DuPont,
Chairman.

1756 *Franklin W. Olin—Direct*

E. I. du Pont de Nemours & Co.,

(President's Office.)

Wilmington, Delaware, Nov. 13, 1905.

Equitable Powder Mfg. Co.,
East Alton, Illinois.

Gentlemen:—

I acknowledge receipt of your favor of the 11th instant enclosing New York Draft for $826.06.

1757

Yours truly,

(Signed) T. C. DuPont,
Chairman.

Q. You are at the present time, I believe, connected with the company known as the Western Powder Manufacturing Company? A. Yes, sir.

Q. Located at Edwards, Ill.? A. Yes, sir.

Q. Do you have any other plants at which black blasting powder is manufactured except the Equitable and Western Powder Manufacturing Com-

1758 pany? A. The Equitable have another plant——

Q. I mean the Equitable Company? A. The Egyptian Powder Company.

Q. What plants are they that the Equitable Company is interested in? A. The Equitable owns the plant at East Alton, Ill., and the one near Fort Smith, Ark. The Egyptian owns the plant in Williamson County, near Marion, in Southern Illinois, and the Western Powder Company's plant.

Q. Do you have any interest in what is known as the United States Powder Company's plant? A. Not personally.

Q. I mean the Equitable Company? A. Yes, sir.

Q. About what per cent of the total of that company does the Equitable have an interest? A. A little over 30 per cent.

Q. Now, do you know a concern known as the Western Cartridge Company? A. Yes, sir.

Q. Does the Equitable Company have any interest in that? A. No, sir.

Q. Do you personally? A. Yes, sir.

Q. How long have you had that interest? A. Since the company was organized, I think in 1896.

Q. Does either, or has either the Equitable at Alton, or the Equitable at Fort Smith, or the Egyptian, or United States or the Western, ever furnished any powder to the du Pont Powder Company? 1760 A. Some of those companies that you name have furnished powder to the du Pont Powder Company.

Q. Will you state which ones? A. The Equitable and the Western.

Q. Now, did either of those other companies furnish any powder to any other manufacturer of powder, any other company engaged in the manufacturing and selling powder? A. Yes, sir.

Q. What other companies? A. The Equitable sells powder to the Austin Powder Company, the 1761 American Powder Company, Independent Powder Company; and the Western supplies powder to the American Powder Mills, to the Egyptian, to the Equitable, and du Pont.

Q. Have you any information at hand as to the total amount of kegs of powder that you have supplied on the order of the du Pont companies, from the Western Powder Company's plant? I have recently had some information compiled, I don't know—I think I gave that information to you, Mr. Abbott.

Q. Will you look at this and see if that is a copy? A. This is a statement prepared at my request showing the amount of powder that had been sold to the du Pont Powder Company.

Q. That was prepared from the books in your office? A. Yes, sir.

Q. By whom? A. The bookkeeper. I requested the manager to have the bookkeeper prepare the information, and that is the statement that the manager game me in answer to my request.

Q. You have examined the statement yourself? A. Yes, sir.

Q. To the best of your knowledge and belief, is it a true statement? A. I should say so.

1763

(Offered and received as an exhibit and marked Plaintiff's Exhibit 1232, as follows:

Statement showing powder manufactured by Western Powder Manufacturing Company, at Edwards, Illinois. From date of purchase, September, 1908, to December 31, 1912, as follows:

Month	1908	1909	1910	1911	1912
Jan.		17453	21165	19963	23459
Feb.		18701	17823	17252	22050
1764 Mar.		22115	21304	21509	23359
Apr.		16205	14318	0	9503
May		0	0	0	0
June		0	0	9560	0
July		0	0	0	0
Aug.		0	17936	0	5067
Sept.		0	20353	18760	11523
Oct.		0	19352	22442	19691
Nov.	10686	6010	20005	18581	20124
Dec.	15336	17752	17175	18667	16657
Total	26022	98236	169431	146734	151433

(The months where it is shown nothing made, were not operating.)

STATEMENT OF POWDER SOLD TO THE DU PONT COMPANY.

Year	No. Kegs	
1909	16905	First delivery made to
1910	46403	the du Pont Company
1911	18000	March 12th, 1909,
1912	41686	seven cars, 5,000 kegs.

Q. Now, do you know anything about whether your company has sold powder, black blasting powder—I mean the Western Powder Manufacturing Company—has sold blasting powder to the firm of Applegate & Lewis? A. I believe that concern is a customer of the Western, or has been. 1766

Q. Do you know when they began to be customers? A. No, sir.

Q. Can you say whether it was during the year 1909? A. The name is familiar to me as customers of the Western Powder Company, but I cannot tell you the specific dates of any of the sales to the company. 1767

Q. Have you sold any black blasting powder to the Clark Coal & Coke Company? A. I believe so.

Q. To A. Reents & Brother? A. I think so.

Q. To the Spoon River Coal Company? A. Yes, sir.

Q. To the North Western Coal & Mining Company? A. Yes, sir.

Q. To the Winters Coal Company? A. I am not sure of the Winters Coal Company.

Q. The Big Creek Coal Company? A. Yes, sir.

Q. Now, does the E. I. du Pont de Nemours Powder Company have any interest in the Equitable Powder Manufacturing Company? A. Yes, sir.

1768 *Franklin W. Olin—Direct*

Q. What is the interest which it has in the Equitable Powder Manufacturing Company? A. They own 490 shares of the 1,000 total issue.

Q. When did they acquire that interest first? A. To the best of my recollection in the latter part of the year 1896.

Q. Have they continued to hold that interest down to the present time? A. Yes, sir.

Q. Were any of the members or officers of the E. I. du Pont de Nemours Powder Company at any
1769 time members of your Board of Directors? A. I am not positive of their connection with the du Pont Company; some of the men that I have assumed were associated with du Pont are members of our board.

Q. Will you give me the names of such persons as you have assumed were members of the du Pont companies that have at any time been members of your board? A. Charles L. Patterson and J. A. Haskell. Whether Mr. Haskell is connected with du Pont or not, I do not know.

1770 Q. How long has Mr. Patterson been a member of your board? A. I think five to six years to the best of my recollection.

Q. How long has Mr. Haskell? A. A longer time, 10 or 12 years.

Q. Have you a letter from the vice-president of the E. I. du Pont Powder Company to F. W. Olin dated November 18, 1908? A. Yes, sir.

Q. Will you produce it? A. (Letter produced.)

(Said letter marked for identification No. 1240.)

Q. Mr. Olin, did or did not you write a letter to Charles L. Patterson, vice-president, at Wilmington, Delaware, under date November 21, 1908, on

behalf of the Western Powder Manufacturing Company, and signed by F. W. Olin, president? A. I would not want to speak specifically, without identifying what might have been said. I do not remember the date of any of the correspondence as far back as that.

Q. Before pressing that question, I will refer you to Plaintiff's Identification 1240, which you have already identified, and ask you to state whether that letter came to you in due course? A. Yes, sir; it did. 1772

(Letter offered and received in evidence, and read to the jury as follows):

E. I. du Pont De Nemours Powder Company
Wilmington, Delaware.
Vice President's office.

Address reply to

Drawer 1001, Wilmington. 1773

November 18th, 1908.

Personal

Mr. F. W. Olin, President,
Equitable Powder Mfg. Co.,
East Alton, Illinois.

Dear Sir:

File SD—8993—WD.

In confirmation of our interview in New York, I understand that the arrangement agreed upon is that we are to purchase at least 75,000 kegs of blasting powder a year from the Peoria mill, and have the privilege of taking 100,000 kegs if we want them, and the price to be paid for this powder is to

be 95c. a keg for 1-4 of our purchases and 97 1/2c. a keg for the balance, both prices being f. o. b. mill.

The arrangement to continue in effect for one year and thereafter indefinitely subject to a reasonable notice from either side of a desire to cancel it.

Will you kindly advise me if the foregoing is in accord with your understanding? If so, will you please suggest what notice you think would be reasonable to be given by either side in the event of wishing to terminate the arrangement? Will you
1775 also advise the date upon which you would like the arrangement to begin? I would add that it is my understanding that we will not be expected to take the uniform amount each month, but that the amount ordered per month may be varied to suit the requirements of our business, so long as our total orders for the year do not fall below 75,000 kegs, or over 100,000 kegs.

Yours very truly,

Charles L. Patterson,
Vice President.

1776

Q. Now, did you, Mr. Olin, at any time make a reply to that letter? A. I think so.

Q. Have you that reply at the present time? A. No, sir.

Q. What did you do with it? A. I was not able to find the reply in our files.

Q. Do you know what you did with that at any time? A. Not positively; no, sir; I am under the impression that that came up in the Government suit, and I have no record that indicates that the letter was taken out of the file.

Q. Now, will you look at Government's Exhibit 386, in the Government's suit, and state whether or not that is the document, the letter which you

wrote at that time? Let me see the original letter, please.

Q. (Letter handed over.) A. I should say that that is the reply to a letter of November 28th.

Q. Did or did not you furnish that to the Government? A. I am not positive; I think so.

(The letter referred to was offered and received in evidence and marked Plaintiff's Exhibit No. 1241, and read to the jury as follows: 1778

"Western Powder Manufacturing Co.
Manufacturers of specialties in
Blasting, Mining and Gun Powders

Mining Powder
(Star)
Brand

Received
Nov. 22, 1908
Room 523.

General and sales office: Peoria, Ill.
Works: Edwards, Ill.
("Great Western")

1779

November 21st, 1908.

Chas. L. Patterson, V. P.,
Wilmington, Dela.

Dear Sir:—

Replying to your letter of November 18th, file S D—8993, I think the same fully covers our understanding and agreement as formulated in New York.

I should say that three months' notice might be considered as a reasonable time for either party to adjust themselves to new conditions—if the contract was to be terminated. We will be in position to supply you with powder in the near future as,

assuming that this matter is now closed, I have ordered a car of du Pont kegs, the same as we formerly manufactured for you and shipped to your Belleville Mill, for powder to be manufactured and shipped to Peoria. If this is not satisfactory, please advise.

Yours truly,

Western Powder Mfg. Co.,
(Signed) F. W. Olin,
1781 President.

FWO/S
Wm. Coyne 2/26/09."

Cross examination by Mr. Button:

Q. When your company joined the association in 1906, Mr. Olin, was that association governed by some written agreement, do you recollect? A. That was signed by the Equitable Company.

Q. Well, was there a written agreement either
1782 signed, or that governed the activities of the Association? A. I could not say that there was any agreement.

Q. Well, did the Equitable Association, the Equitable Powder Company, ever sign what was known as the "Fundamental Agreement," an agreement that is claimed to have been executed in 1889? I will show you a copy of that agreement, Plaintiff's Exhibit No. 1116, purporting to be signed by various people. The Equitable Powder Company never signed that agreement, did it? A. I don't think that my company ever had anything to do with this agreement.

Q. If there was an association that you joined, it was some other association than the one that is mentioned in this agreement? A. I think so.

Q. This agreement mentions the Board of Trade; is the Board of Trade connected with any Association you have anything to do with? A. Not that I recall.

Q. Which company acquired the stock of the Egyptian Powder Company? A. The Equitable Powder Manufacturing Company.

Q. Did it acquire more than a majority, more than half? A. Yes, sir.

Q. And what was the date? A. The early part of the year 1907. 1784

Q. Did the du Pont Powder Company have anything whatever to do with that acquisition? A. No, sir.

Mr. Abbott: What acquisition are you inquiring about?

Mr. Button: The Egyptian Company.

Q. Did the du Pont Company, or any one connected with that company know that you intended to acquire that stock? A. No, sir. 1785

Q. Did you conduct personally negotiations for the purchase of Egyptian stock, Mr. Olin? A. Yes, sir.

Q. Did you disclose your purpose to any one connected with the du Pont Company? A. No, sir.

Q. Did you keep those negotiations secret, Mr. Olin? A. Yes, sir.

Q. Was any suggestion ever made to you by the du Pont Company or anybody connected with it? A. None whatever.

Q. Asking you to purchase that stock? A. None whatever.

Q. Now, in reference to the interest of 30 per cent. of the stock of the United States Powder

Company, when was that acquired by the Equitable, approximately? A. A little later in the year 1907, about the same time in 1907 as I acquired the Egyptian.

Q. Did you negotiate for the purchase of that stock personally? A. Yes, sir.

Q. Did you disclose your purpose in that regard to the du Pont Company, or any one connected with it? A. No, sir.

1787 Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

1788 Q. And likewise, did you keep those negotiations secret until they were consumated? A. Yes, sir.

Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. The Western Powder Company was known as a concern that is organized, was it not? A. Yes, sir.

Q. Has the du Pont anything to do with the stock ownership of that concern? (Objection overruled.) A. I think the du Ponts have some of the preferred stock.

Q. Have they anything to do with the management? A. Nothing whatever.

Q. Never did have? A. No, sir.

Q. In reference to the stock ownership of the du Pont Company in the Equitable Powder Company, I understand that is 49 per cent? A. Yes, sir.

1790 Q. I desire to ask you as to the individual holders of the other 51 per cent, Mr. Olin, but I would like to have you state, if you have no objection, as to whether that 51 per cent is held by a very few individuals? A. Very few.

Q. And is that 51 per cent of stock harmonious in its action in reference to the control of the Equitable Powder Company? A. Entirely so.

Q. And has it been since the organization? A. Always been.

Q. And has that stock interest of 51 per cent always controlled the Equitable Company and its 1791 policies? A. Yes, sir.

Q. How many directors have the du Pont interests on the board? A. Two.

Q. How many of your interests? A. Three.

Q. Are there frequent directors' meetings, at which these two directors attend? A. No, sir.

Q. In a general way how often are those meetings held? A. The last meeting was subsequent to the annual meeting in February last.

Q. Now, in the practical operation of your company, and I refer to the period from its organization down to September, 1908, did the du Pont Company or any of its officers, as a matter of fact, ever dictate any policy of the Equitable Powder Company? A. No, sir.

Q. Did they ever have anything whatsoever to do with the prices at which you sold your product to any customer? A. No, sir.

Q. Did they know how much you were charging for your powder to various customers? A. Only as they could get it from the customers.

Q. You never told them? A. No, sir.

Q. And they were not consulted? A. No, sir.

Q. Was any arrangement whatsoever made with
1793 the du Pont Company as to a division of trade in reference to your customers, of the Equitable? A. No, sir.

Q. That was entirely managed by yourself and the other internal officers of the company, was it not? A. Myself, principally.

Q. Where are the executive offices of the company located, Mr. Olin? A. The two that were referred to—C. L. Patterson, I think——

Q. I mean the offices? A. Their principal offices are at East Alton, Illinois.

Q. And is it from that office that the sales are
1794 made and prices fixed, and customers attended to? A. Yes, sir.

Q. And of course the du Pont Company has no representative there and never did have? A. No, sir.

Q. Now in reference to the furnishing of powder to the various companies, is it customary, in business, in case of an explosion or otherwise, for one powder company to apply to other standard companies to help them to furnish powder for their customers?

Objected to on the ground that it was not cross examination. Objection overruled. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

Q. Will you read the question? (The stenographer repeated the question.) A. Yes, sir, it is customary.

Q. And in case there is time enough to do it, has it been customary ever since you were in the business, to pack the powder in kegs for the purchaser? 1796
A. It has always been the custom to do that, if there was time to get the kegs delivered.

Q. Now, in one of these letters, Mr. Olin, I think the letter that you wrote to Mr. Patterson, you say that you will pack the powder in the du Pont kegs, similar to those that have theretofore been furnished. In that regard, I expect you run a keg factory, do you not, in Illinois? A. We have keg manufacturing machinery at our different powder plants and manufacture kegs for some other companies. 1797

Q. And the explanation of that reference is that you had theretofore on occasion sold kegs to the du Pont Company under order? A. Yes, sir.

Q. I suppose you have sold these kegs to other companies besides the du Pont? A. I did not get your question.

Q. I suppose you have sold these kegs to other companies besides the du Pont? A. Yes, sir.

Q. Where is that machinery located? A. At East Alton.

Q. Now, in reference to that arrangement which was made between you and Mr. Patterson for the purchase by the du Pont Company for a certain amount of powder, did they ever take the 75,000

kegs of powder in the year, that were mentioned in that letter? A. No, sir.

Q. And this statement shows that in 1909, they took something less than 17,000 kegs, did they not, to be exact, 16,905? A. 19——

Q. 1909. A. 16,905.

Q. Now, Mr. Olin, when that arrangement was made, as shown by these letters that passed between you and Mr. Patterson, had there been previous negotiations in reference to the matter? A. I think not.

1799

Q. Had there been negotiations about the purchase of the powder, previous to those letters? I ask the question, because one of the letters refer to the fact that you met Mr. Patterson in New York? A. That was the first conference, I think, on the subject.

Q. In this letter, Plaintiff's Exhibit 1240, the letter begins, on November 18th, 1908, "In confirmation of our interview in New York." A. Yes, sir.

1800

Q. Well, now, how long before this letter was that interview so referred to, do you recollect? A. I think that letter was in my office when I returned from New York, probably three or four days after our conference in New York.

Q. Well, now, previous to the purchase of the Buckeye Powder plant by yourself, had there been any talk between you and Mr. Patterson, or anyone connected with the du Pont Company, in reference to the purchase by the du Pont Company, or any of its interests, of powder to be manufactured at that Buckeye plant? A. No, sir.

Q. As I understand, you have already testified that the first negotiation about purchase of powder was three or four days prior to November 18, 1908, prior to this letter? A. Yes, sir.

Q. That was the first you ever heard of it, was it? A. Yes, sir.

Q. And the second year, 1910, according to this statement, they took 46,403 kegs, is that right, Mr. Olin? A. I believe that is correct.

Q. And in 1911, 18,000? A. Yes, sir.

Q. And in 1912, 41,686? A. I think those figures are correct.

Redirect examination by Mr. Abbott:

1802

Q. You stated, Mr. Olin, that you didn't know anything about the document which was handed to you by Mr .Button, known as the "Fundamental Agreement"? A. Yes, sir.

Q. What agreement, if any, was there that formed the basis of the association of which you were a member? A. I don't know of any agreement, Mr. Abbott.

Q. Was there an agreement that you ever heard of, or knew of, called the "Understanding"? A. No, sir; I have no recollection of such.

1803

Q. Was there an agreement that you knew of, known as the "Abstract"? A. I believe that I have some recollection of some "Abstract"; what it was an abstract of I would not be positive.

Q. As a matter of fact, did you not at one time have a copy of what was known as the "Abstract"? A. I might have had.

Q. I show you Plaintiff's Identification P 3, and I refer you to page 999 of that document, and ask you to look at Exhibit 113, there, and state whether or not that has any relation to the document which you have testified you heard of as the "Abstract"? (Objection overruled.) A. I am not able to state that I have seen a document containing the same reading matter that this "Abstract" of July 1st contains.

1804 Q. Do you recognize anything in that matter in that document that is similar to what you have seen as the abstract? (Objection overruled.) A. The districts that are mentioned here are similar to the districts that were discussed as territory over which blasting powder was sold in the association.

Q. Is there anything else in there that you can see that is similar to anything that you saw in this abstract that you spoke of? A. I cannot state from
1805 memory now that I have seen this in any form before.

Q. I am not asking you to state whether you have seen that particular document, but I am asking you to state whether there is anything in that document which you now see before you, that is similar to this document which you have testified to as the abstract? A. Not positively; no, sir.

Q. What is your impression, what is your best recollection regarding that matter? A. It is a very difficult matter for me to form a conclusion as to what this is, as I do not recall having read it be-
1806 fore. The districts as recited here are somewhat familiar to me.

Q. Will you look in that document and see if there is anything there with reference to oversales and undersales? (Objection overruled.)

Q. At the same time see whether there is anything with reference to any committee, board of trade or other organization that you are familiar with in the operation of the association? A. This refers to an adjustment for oversales and undersales.

Q. Are the provisions that you note there provisions that you were familiar with in the operations of the association? A. The adjustment of oversales in this seems to be somewhat similar.

Q. How about the governing body, board of trade or advisory committee?

Mr. Button: There is no board of trade mentioned in it.

Q. I am asking the witness to indicate whatever he has in mind on that subject? A. An advisory committee is referred to here consisting of five members and a secretary and treasurer.

Q. Did they have anything similar to anything you knew of in the organization? A. Yes, sir; that is similar.

Q. Can you think of anything else there in that 1808
document there that has any resemblance to what you knew to be the manner in which the business of the association was conducted? A. There seems to be an advisory committee of five that was similar, that they report to a general meeting, which is also similar.

Q. In that connection, Mr. Olin, were you or were you not at any time a member of the advisory committee yourself? A. I was a member.

Q. Do you remember when you first became a member of the advisory committee? A. I cannot; I was not a member of the advisory committee as 1809
early as I was a member of the association.

Q. Can you remember about how many years you served as a member of the advisory committee? A. No; I cannot state that positively.

Q. All right, will you proceed now and indicate anything else in that document? A. That is about all I can identify that appeals to me as being similar.

Q. Will you look at the date of that document and see whether or not it has anything to do with about the time you joined the organization? A. It is dated about that time; yes, sir.

Q. It is July 1, 1896, was it? A. Yes, sir.

Q. You stated that there were only a few individuals who owned the 51 per cent of stock in

the Equitable Powder Company. Who were those individuals? A. Mr. C. F. McMurray and myself.

Q. Have you and Mr. McMurray owned that stock ever since the organization of the company? A. Yes, sir.

Q. The du Pont Company, which owns, as you have stated, 49 per cent of that stock, have they ever at any time participated in any of the meetings? A. Yes; they attend our annual meeting. We are a Jersey corporation, and our annual meet-
1811 ings are held in Jersey City.

Q. Who, as a rule, represent them at those meetings? A. There have been various representatives. I recall Mr. Haskell being present and Mr. Patterson, and Mr. Higgins. Mr. Higgins, however, I do not think was a du Pont employee.

Q. Did they at any time send proxies for any one to vote their stock? A. Yes, sir.

Q. Did they ever send you a proxy to vote? A. I think they have at times.

Q. At any of these meetings did there ever arise
1812 any contention between yourselves and themselves which caused a split in your vote, one giving one way and another another? A. I cannot say as to that.

Q. As a matter of fact, do you not work in harmony in the policy of that organization, do you not, as a matter of fact, cast your votes unanimously for any proposition that is considered in the matter of policy? A. No, sir.

Q. Will you give me instances when there has been a diversity of opinion between you? A. I cannot give you instances, but I know I control that company, and I manage its affairs, and vote as I please.

Q. Has there been any instance in which the du Pont Company has antagonized you in the matter of voting its stock? A. Yes, sir.

Q. Will you give that instance? A. I cannot give you the dates and details, but I recall that we have had dissenting votes.

Q. Has the du Pont Company at any time voted its 49 per cent solidly against you in any one case? A. I am not prepared to——

Q. You cannot recall any instance in which that was done? A. That would be in a stockholders' meeting. I am not prepared to state either way on that proposition.

1814

Q. You are unable to remember a single case in which there has been such a diversity of opinion between you that your vote on the proposition has been diverse? A. I would not from memory feel confident to make a statement.

Q. Before you bought the plant of the Buckeye Powder Company, did you ever have any business with that company representing the Equitable Powder Company? A. I might have had.

Q. You were inquired about concerning a custom that prevailed as to the buying of powder of other manufacturers, and having that powder put 1815
in the kegs of the particular company that ordered the powder? A. Yes, sir.

Q. Did you ever make any purchases of that kind of the Buckeye Powder Company, while that company was doing business? A. We might have done so.

Q. Do you remember whether or not you made any purchases of the Buckeye Powder Company, of powder that was manufactured by them and had that powder put in your kegs? A. I cannot state positively, I know we tried to purchase powder from the Buckeye Powder Company, sent our sales manager there to Peoria, to see Mr. Waddell for that purpose. I recall his reporting that he could not reach an agreement with Mr. Waddell, spe-

cifically as to the quantity that he would deliver, or when he would deliver it, and doubted if we would get any powder.

Q. Now as a matter of fact I will ask you whether or not you purchased of the Buckeye Powder Company, 6400 kegs of Buckeye powder during the time that the Buckeye Powder Company was in business? A. We might have done so.

Q. And had it shipped to your customers from the Buckeye Powder Company's plant? A. We
1817 might have done so.

Q. I will ask you whether or not on subsequent occasions you did not make an effort to purchase further supplies of the Buckeye Powder Company for the same purpose, and were unable to do so? A. We tried to purchase powder, and it is necessary when we have accidents to get the powder.

Q. Did you not also, as manager or president, as the case may be, of the Egyptian Powder Company, make large purchases of Buckeye powder during the time of its existence, and have that
1818 powder shipped to customers of the Egyptian Powder Company? A. We might have done so.

Deposition of JAMES B. DOOLEY, a witness produced on behalf of the plaintiff, being duly sworn, was read as follows:

Direct examination by Mr. Abbott:

Q. Where do you reside, Mr. Dooley? A. Peoria, Ills.

Q. How long have you resided in Peoria? A. About 32 years.

Q. What is your business? A. Coal business; coal and blasting powder and mining supplies.

Q. Under what name do you conduct that business? A. Dooley Brothers.

Q. Under what name did you have that business during the years 1903 to 1908? A. Dooley Brothers, the same name.

Q. Is the Dooley Brothers a corporation? A. They are now.

Q. How long have they been? A. I think it was in 1909.

Q. Previous to that time, what was it? A. A 1820
partnership.

Q. Who were the partners? A. My brother and myself.

Q. In your business, the coal business, did you have occasion to use black blasting powder in any way? A. Do you mean sell it?

Q. Purchase it? A. Yes, we purchased it.

Q. What kind of glack blasting powder have you purchased and sold during the years 1903 to 1909? A. Du Pont blasting powder.

Q. Previous to that time, what kind did you use? A. Phoenix. 1821

Q. Were you the agent of the Phoenix Powder Company before 1903? (Objection overruled.)

Q. What relation did you sustain to the Phoenix Powder Company at the time you were doing business for them? (Objection overruled.) A. We were agents for them.

Q. After you ceased to represent the Phoenix Powder Company did you enter into any arrangement of any kind with the du Pont Powder Company for the handling of their powder? A. Yes, sir.

Q. Was that arrangement in writing? A. Yes, sir.

Q. Have you got the contract with you at this time? A. The original contract?

Q. Yes. A. No, sir.

Q. Do you know where it is? A. I do not.

Q. Have you made a search for it? A. Yes, sir.

Q. And have not been able to find it? A. I have not.

Q. Have you any contract now with the du Pont Powder Company? A. Yes.

Q. In writing? A. Yes, sir.

Q. Have you that with you? A. It's among those papers there that you have.

1823 Q. I submit to you a paper writing purporting to be a contract between Dooley Brothers and the E. I. du Pont de Nemoures Powder Company, and ask you to state whether that is the contract which is now in existence between your company and the du Pont Powder Company? A. Yes, sir.

Q. In how many parts is this contract made? A. That contract was in two parts; we have a copy, and I presume the powder company has a copy.

Q. Did you have contracts made in more than two parts? A. Not with the du Pont, that I re-

1824 member of.

Q. The other part of this contract was surrendered to the du Pont Powder Company? A. Yes, sir.

Q. As far as you know, it is in their possession? A. As far as I know.

Q. Does that statement hold good as to the other contracts which you say you have had with the other companies since 1903? A. I don't know; our contracts expired, and there was no further use for them.

Q. In regard to the last inquiry made as to the sales direct to customers of Dooley Brothers, I will ask you whether or not Dooley Brothers have any responsibility to the duPont Powder Company with reference to any such sales that may have been made by them? A. Yes.

Q. State what that responsibility is. A. We are responsible for the payment of the account to them.

Q. You are responsible for the collection for sales they make? A. No; the sales we make.

Q. Where Dooley Brothers make a sale direct to a customer themselves, they are responsible for the account? A. Yes, sir.

Q. But where a sale is made by the Powder Company to some customer in this district, the Peoria Mining District, then they are responsible for the account? A. Yes, sir. 1826

Q. But they pay you a commission of five cents per keg? A. Yes, sir.

Q. Now, where do you keep the powder which you purchase from the du Pont Powder Company, and distribute to your customers? A. In the magazines out here, on what is known as the Plank Road.

Q. Who owns that magazine? A. The du Pont Powder Company.

Q. Who has been the owner of that magazine from July, 1903, to the present time? A. It was 1827 not built in 1903.

Q. When was it built? A. I don't recall, but later than that.

Q. How much later? A. Probably two or three years.

Q. Who has been the owner of the magazine from the time it was built to the present time? (Objection overruled.) A. The du Pont Powder Company.

Q. Where did you store your powder previous to that time? A. We had a magazine where the Barrett Manufacturing Company is now. We used those magazines.

Q. Where were they? (Objection overruled.) A. One belonged to the Phoenix Powder Company.

1828 Q. Did all the magazines you have used previous to that time, belong to the Phoenix Powder Company? A. There were several of them there, but we used one of them.

Q. From the time in 1903, when you became agent of the du Pont Powder Company, until the time you began using the magazine of the du Pont Powder Company, what magazines did you use? (Objection overruled.) A. It belongs to the Phoenix Powder Company, as I remember.

1829 Q. With whom were your arrangements for the use of the Phoenix Powder Company's magazine made. Were they in writing? (Objection overruled.) A. No, they were not in writing. Mr. Patterson at that time was the superintendent, I think in Chicago—D. R. W. Patterson.

Q. Was that on a lease basis? (Objection overruled.) A. We did not pay any rent for it.

Q. After you ceased to be the agent for the Phoenix Powder Company, and became the agent of the du Pont Powder Company, did the Phoenix Pow-

1830 der Company ask you to pay anything for the use of the magazine? (Objection overruled.) A. I do not remember whether they ever asked us or not.

Q. Do you remember whether you ever paid anything? A. I do not think we did.

Q. Have you paid anything in the way of rental, or compensation to the du Pont Company, for the usea of their magazine? (Objection overruled.) A. No.

Q. Have they ever demanded any? (Objection overruled.) A. No.

Q. Now, were there any other agents, if you know, of the du Pont Powder Company operating in this Peoria mining district, during the period 1903 to 1908, inclusive, other than the Dooley

Brothers? (Objection overruled.) A. Mr. C. J. Off, as I understand it, was the agent.

Q. Do you know anything about the terms of his arrangement or contract with the du Pont Powder Company? A. No, I know nothing about the arrangement.

Q. Did Mr. Off have the use of the magazines which you have had the use of during that period? (Objection overruled.) A. No, he did not use our magazine.

1832

Cross examination by Mr. Button:

Q. I do not quite understand from your testimony, Mr. Dooley, whether or not you get five cents a keg from the du Pont Company on powder which is sold directly by that company without your intervention; do you get any pay for that? A. We never had but one case, and we got five cents for that; that is, they had a contract with us, and at the unexpired end of that contract, we got five cents of it, but not where they sell direct and they contract 1833 directly in this district.

Q. If they sell powder in this district themselves, you don't get five cents a keg on that? A. Not unless we have a contract with that party. They have several direct customers here that they had before we handled their powder.

Q. Under this contract of 1912 which has been introduced here, you order this powder, and you and your employees sell it to your various customers hereabouts; that is the arrangement, is it not? A. Yes, sir.

Q. Has the du Pont Company anything to do with the question of whom you shall employ as salesman, or the payment of your salesman? A. They have not.

Q. You do that, and control them absolutely, do you not? A. Yes, sir.

Q. And furthermore, under this arrangement, you sell this powder to these various customers and have to pay the du Pont Company for the powder, regardless of whether you succeed in getting it from your customers? A. Oh, yes; we pay the du Pont Powder Company.

Q. That is, the du Pont Powder Company has
1835 nothing to do with your collections; they do not help you in your collections? A. No, they have nothing to do with it; we make our own collections, and we pay the du Pont Powder Company for all powder we buy of them.

Q. You were not subpoenaed in this case? A. No.

Q. And you produced these contracts at Mr. Abbott's request and submitted them? A. Yes, sir.

Re-direct examination by Mr. Abbott:

1836 Q. In answer to a question propounded by Mr. Button, you said there was only one case in which that occurred; what did you have in mind? A. The contract we had with the Wolschlag Coal Company. Ditewig & McElwee purchased the Wolschlag mine.

Q. What happened then? A. They stated their preference to buy direct from the Powder Company rather than from us; they had a contract with them for their requirements, so that at their reques we gave up our rights under our contract.

Q. And upon that business you received five cents per keg? A. Yes, up to the expiration of their contract, which was a few months, probably.

Q. You further stated to Mr. Button, that you made no claim for 5 cents per keg unless the du

Pont Company sold to some person with whom you had a contract? A. That's right.

Q. I will ask you to indicate in the contract, which is marked Plaintiff's "Exhibit 162," where that restriction occurs. A. I don't know that it occurs; I know it is the practice.

Q. That is the practice? A. Yes, sir.

Mr. Button: Now, wait a moment.
Mr. Abbott: There is nothing in that.
Mr. Button: That is part of the answer. 1838

A. There is nothing in that; that is the practice. This is "Carload shipments," and it reads, "made by the party of the first part direct to customers of the party of the second part in Peoria Coal Mining district." It is specified there we get 5 cents a keg on all powder we sell, but if they sold direct—it refers only to contract customers of our own, and not to anything they may take up.

Q. You spoke in your cross examination something about employes, your employes not being in the pay of any one except yourself, did you not? 1839
A. Yes.

Q. Do you know Mr. P. H. Donnelly? A. Yes, sir.

Q. How long have you known him? A. Probably 20 years.

Q. Do you know whom he represents? A. Yes.

Q. What business is he in? A. Salesman for the du Pont Powder Company.

Q. He has a right to make sales of du Pont powder in this district? A. Yes, direct carload sales.

Q. What relation, if any, does Mr. Donnelly sustain to you? A. None; he is only salesman for the du Pont Powder Company; he visits us; representing the du Pont Powder Company.

Q. He has a right to make sales of du Pont powder in this district? A. Yes; direct carload sales.

Q. In the sale of du Pont powder? A. We try to sell du Pont powder and make our own business; if he can assist us, being in the employ of the du Pont Powder Company, we would expect him to.

Q. Does he not use his best endeavor to make sales? A. We expect him to.

Q. Has that been your experience? A. I don't
1841 know that he did, and I don't know that he did otherwise either, but we would expect him to.

Q. Hasn't he been responsible for bringing you certain large customers? A. I don't know of any.

Q. Didn't he have anything to do with bringing you Horace Clark? A. No; we brought him over to the du Pont from the Phoenix; Horace Clark was an old customer ever since he has been in the mining business.

Q. He is still a customer of yours? A. Yes, sir.

Q. The Clark Coal and Coke Company? A. Yes, sir.

1842 Q. Does he purchase from you exclusively? A. I don't know.

Q. You don't know that he has a contract with the Western Powder Company? A. I don't know.

Q. Mr. Dooley, you are not interested in this litigation in which you are now giving your testimony? A. Not at all.

Q. You know Mr. Moffatt? A. Yes.

Q. What relation does he sustain to you? A. He is our salesman.

Q. Is he in your employ in any other way in connection with your business? A. He is salesman and vice-president of our company.

Q. Is he a stockholder in your company? A. Yes.

Q. Has Mr. Moffatt, if you know, given any particular time of his services within the past year in

connection with matters relating to this litigation? A. I don't know.

Q. You don't know whether he has been assisting in producing testimony on behalf of the defendants in this case? A. Yes, I think that he brought in a witness or something of that kind; I don't know that he did, but he might have brought one in.

Q. You don't know of anything particular that he has done in connection with the matter? A. No. 1844

Re-cross examination by Mr. Button:

Q. Mr. Donnelly is not in your employ, and is not paid by you? A. No, sir.

Q. And never has been? A. No, never has been.

Deposition of FERDINAND LUTHY, duly sworn as a witness for the plaintiff read as follows: 1845

Direct examination by Mr. Abbott:

Q. State your name, age, occupation and place of residence? A. Ferdinand Luthy; 59; am President of the Merchants National Bank of Peoria, Illinois; am interested in the firm of Luthy & Co. of Peoria, and in various other businesses; I reside in Peoria, Ill.

Q. How long have you resided in Peoria, Illinois? A. Practically all my life.

Q. Did you know anything about the Buckeye Powder Company during its existence? A. I first met Mr. Waddell about the time he came to Peoria to locate a plant, and I had several interviews with

him in which he went into the powder manufacturing business quite extensively in explaining it to me. He said he had been with the du Pont people for many years, that he had held an important position there and received a good salary, but he wanted to start a powder plant of his own so he could leave a business to his sons when he died; that he thought his knowledge of the business was such it would enable him to make a success of it;
1847 he said that powder at that time was selling for, I think it was, about $1.35 a keg, and that powder could be produced in the neighborhood of 80 cents or 85 cents a keg, and that there was a good margin in the business. That the du Pont people were large makers of powder and practically controlled the situation, and it would not be likely that they would reduce prices so it would take off the margins, and the prospect looked good to me, and I took some stock in his company.

Q. How long did you remain a stockholder? A. I continued to be a stockholder, and am still a
1848 stockholder.

Q. State whether or not at any time you ever had any negotiations, or conferences with any person or persons in connection of the du Pont Powder Company, with reference to the sale of the Buckeye Powder plant to that company, or some of its associates? A. About the spring of 1907, I think it was, I went to New York, and while there I thought I would run down to Wilmington and see the du Pont people, and ascertain whether I could get from them an offer for the Buckeye plant.

Mr. Katzenbach: Defendants object to this answer on the ground it is giving the conclusion of the witness, and giving facts not within his knowledge.

The Court: The last part must be struck out.

Q. State if you can how you obtained the knowledge you have just referred to? A. From conversations had from time to time with Mr. Waddell. I did not finish my last answer—shall I go on?

Q. Yes, go right on. A. I think I arrived in New York on the night of April 22, 1907, and the next morning I telephoned down to Wilmington to T. C. du Pont to see whether I could have an interview 1850
with him. I was going to be in New York several days, and I learned over the telephone that T. C. du Pont was going to the Jamestown Exposition that night, that his train would leave about 7 o'clock, and I arranged to run down to Wilmington to see him late that afternoon. I arrived there and met Mr. T. C. du Pont about 4.30, possibly 5 o'clock P. M., and we had a conversation until, I think, about 6.30. In the conversation I said to Mr. du Pont, that I was not authorized to offer the Buckeye Powder Co. for sale, but that I was a stockholder and to that extent was interested, and 1851
I believed if I could get a reasonable offer for the plant I might induce the stockholders to sell it; he also said he was not authorized by his company to make any negotiations, so we talked informally about the matter. In talking about the matter, Mr. du Pont said that there had been a suit brought against the du Pont Company, and that even if they were so inclined, they could not at this time purchase the Buckeye plant, because it would be apt to prejudice their suit—that it would seem it might be done to stop the suit, then pending against them, and it might hurt them, but he said he would be very glad to have me look up the matter further with Pierre du Pont and Mr. Moxham. I stated

to him I would like to take the matter up further on his return from Jamestown, that I understood he would be there only two or three days, and I would return to New York and take up the interview later if I could, with all of them. My interview with Mr. T. C. du Pont was very pleasant; I found him a very agreeable gentleman, and in his diplomatic way he rather left some hope in my mind I might be able to do something towards gettitng a price. I returned to New York, and I think
1853 Mr. Moxham was to telephone me when I could meet him, but I waited over several days and did not get such a telephone, so I called up the du Pont people, and I think I had a telephone conversation with Mr. Moxham and I went back there; they expected Pierre du Pont back the next day. I went down to Wilmington the next day, I think it was about April 27, 1907, and when I got there I learned that T. C. du Pont would not be there, and had sent a message to cancel his engagements for several days, as he would not return; so I had an interview
1854 with Pierre du Pont and Mr. Moxham, and found them of a different mind and temperament than I did Mr. T. C. du Pont; they talked vindictively towards Mr. Waddell; they said Mr. Waddell had started this plant for the purpose of selling out, and they had got tired of those things and did not propose to buy Mr. Waddell out; we talked about prices; I mentioned how low they were, and Mr. Pierre du Pont told me they could make a good profit at 80 cents, and were satisfied with it, and he did not think powder would be any higher than that in the future. I tried to state that the purchase of one or two competitors might enable them to advance the price, so it might be well for them to consider a move of that kind. I had also previously stated to them I was not there with author-

ity, but was simply there myself because I was interested and if I could get a suitable offer on the Buckeye plant, I might get stockholders to consider such offer. That was the start of that interview. I should have said Mr. Moxham was more vindictive than Pierre du Pont towards Mr. Waddell. We had quite a long conversation off and on, and in that conversation he said Mr. Waddell was crazy, that his mind was unbalanced. I said to Mr. Moxham I thought on the contrary that Mr. 1856
Waddell's mind was exceptionally clear for a man of his age, and if he had any other opinion he certainly was wrong in the matter. We talked at length on those lines, but there was nothing done towards arriving at any offer they would be willing to make on the Buckeye plant, and I left that evening, returning to New York. (Objection overruled.)

Q. Can you recall any special remark, or the substance of any special remark, made by Mr. Moxham or by Pierre du Pont to you giving their reasons why they would not deal with Mr. Waddell 1857
other than as you have stated? (Objection overruled.)

(Motion to strike out answer sustained.)

Q. As nearly as you can, give the remarks that were made by either of the gentlemen, that gave you the impression you have just now indicated? A. In our conversation the price of powder had been discussed and I called their attention to the big drop in powder in the last few years; that when the Buckeye Co. started in business, powder was selling at about $1.35 a keg, the larger contractors probably getting 5 or 10 cents lower than that and at the present time powder had declined to about 80 cents per keg and the ordinary manufacturer

1858 could have no margin at that rate. Mr. Pierre du Pont said they could produce powder at 80 cents and were well satisfied with their profit on that basis and he did not believe powder in the future would be any higher than 80 cents. I don't recall anything further at this moment.

Q. Did you have any correspondence with T. C. du Pont? A. We exchanged a few letters, I think.

Q. Did you address a letter to T. C. du Pont on or about December 12, 1906? A. Yes, sir.

1859 Q. Have you the original letter which you addressed to Mr. du Pont at that time? A. No, sir.

Q. Have you a copy of the letter you addressed on that date? A. Yes, sir.

Q. Where did you obtain the copy? A. From my copy book this afternoon.

Q. Look at the copy of the letter now shown you, marked Exhibit 11, and state if that is a copy of the letter you have just testified about? A. Yes, sir.

Letter offered and received in evidence and

1860 read to the jury as follows:

"Dec. 12, 1906.

Mr. T. C. du Pont,
President, du Pont Powder Company,
Wilmington, Delaware.

Dear Sir:

I have tried to communicate with you by telephone the past two days, but the lines were not working satisfactorily. I wanted to talk with you in relation to the Buckeye Powder Company, of this city.

I have been informed that Mr. Waddell, the president of the Buckeye Powder Co., is negotiating with

a syndicate representing some seventy mines, who desire to acquire this plant, and indirectly I learned that they would expect to increase the capacity to about three thousand kegs daily. Mr. Waddell would be then retained as the General Manager.

I am a stockholder in this company, and have been asked for a price on my stock, but have not yet named the same, but may do so in the near future. My holdings are not large, and do not prejudice me, and any dealings that we might have, 1862
you can rely upon being straight and business-like, and should you become interested in this territory, I should hope to secure for our bank your business in this city.

It has occurred to me that before this deal is consummated it might be to your interest to investigate conditions here, and that possibly you might desire to acquire this plant, while it could be had, in preference to having a large co-operative mill here. I think other matters could also be satisfactorily adjusted.

If you deem it advisable to visit Peoria, and in- 1863
spect the plant, and inform yourself of conditions here, I can arrange a meeting, with Mr. Waddell, so that you would not lose a great deal of time; or, if I can be of service to you in any other way, I await your pleasure.

Very truly yours,

Ferd. Luthy."

Q. Did you receive an answer to that letter? A. I think I did.

Q. Look at the letter now shown you marked "Exhibit 12" and state whether or not that is the answer which you received to the letter marked Exhibit 11? A. Yes, sir.

Letter offered and received in evidence and read to the jury as follows:

"Mr. Ferd Luthy, President,
The Merchants National Bank,
Peoria, Illinois.

Dear Sir:

I am in receipt of your letter of the 12th, and with you, regret that we did not get into touch with each other over the phone.

We have understood for some time that Mr. Waddell has been trying to dispose of his powder plant to operators. Our experience in other directions has taught us that we can usually make much better terms for the purchase of such a plant after the operators have tried the experiment of making their own powder rather than before, and if, therefore, we were to seriously consider the purchase of this plant we would prefer making the effort after the operators had gathered the experience that is probably before them. We have good reason to believe, however, that the powder business is on the eve of such radical changes and improvements in its method of manufacture that our people would not care to negotiate for any of the existing mills even on apparently favorable terms. I am very much obliged to you indeed for writing to me because I think you have written honestly and frankly and feel sure from the tone of your letter that any dealings between us would be entirely straight.

Adding that if I can be of any service to you at any time I will consider it a favor if you will advise me of it, I beg to remain

Yours very truly,
T. C. du Pont,
President."

Q. Look at the paper now shown you, marked Exhibit 13, and state whether or not you ever saw that paper before, and if so, state what it is? A. Yes, sir; it is a letter from Mr. T. C. du Pont to myself.

Letter offered and received in evidence and read to the jury as follows:

"October 17th, 1907.

1868

Mr. Ferd Luthy, President,
Merchants Nat. Bank,
Peoria, Illinois.

Dear Sir:

I am in receipt of your letter of the 15th. We quite agree with you in the general proposition of the advisability of removing needless friction when the same can be done amicably and properly done, and highly appreciate the friendly position taken by you, but in view of the attitude of Mr. Waddell, 1869
as stated by you and shown by his action in the past, we do not see how anything can be accomplished to eliminate bitter feeling. You say his position is that we are vindictive enemies of his company and are using every endeavor to wreck it. There is absolutely no foundation for this position and we think he must know it, so we do not see how anything can be gained by asserting or proving the fact that his assumption is unfounded. We greatly appreciate your kind and friendly interest but under the circumstances we sss no way in which your wise suggestion could be made effective.

Yours very truly,

T. C. du Pont,
President.

1870 Q. Look at the papers now shown you, marked Exhibits 14 to 15, and state whether or not you have seen those documents before, and, if so, state what they are? A. They are letters intended for me, though my name is spelled wrong; I received them from Mr. T. C. du Pont.

Letter offered and received in evidence as exhibit 14 read to the jury as follows:

1871 Mr. Ferd Luthy, President,
Merchants National Bank,
Peoria, Ills.

Dear Sir:

I am very sorry that the phone connection at Peoria was so indistinct. I heard your voice, but caught four or five words only. Unless the lines are very clear I find it is very difficult to understand as far as Peoria. It is too bad we could not get a better connection.

1872

Yours truly,

T. C. du Pont.

Exhibit 15 read to the jury as follows:

Dec. 11, 1906.

Mr. Ferd Luthy, President,
Merchants National Bank,
Peoria, Illinois.

Dear Sir:

I was sorry that the telephone connection was so poor yesterday afternoon. I could hear the exchange girl in Chicago quite distinctly and once I

think I heard a voice that did not belong to the exchange girl, but it was very indistinct.

Being sorry we did not make connection, I beg to remain,

Yours truly,

T. C. du Pont.

Q. Look at the paper now shown you, marked Exhibit 16, and state what that paper is, if you know? A. This is a copy of a letter I wrote to Mr. T. C. du Pont on January 3, 1907, that is I 1874
think it was in 1907.

Letter offered and received in evidence and read to the jury as follows:

Mr. T. C. du Pont, President,
Wilmington, Delaware.

Dear Sir:

I wish to acknowledge receipt of your letter December 2d; I should have done so before, but have 1875
been very busy during the holidays.

I want to thank you for your courteous and frank answer to my letter.

Although I have had much experience in manufacturing and merchandising in other lines, I know nothing of the powder business, and, if I did, I would not presume to offer suggestions.

Conditions here I thought would have been greatly to your interest to have personally investigated, and after that you could of course act as you thought best. I might say that soon after my letter of the 12th ulto., numerous inquiries, which evidently started in the East, were being made here, on the Buckeye Powder Company, by unfriendly or prejudiced parties. A portion of these reached

me, but I declined to give them any information, preferring to deal with principals.

I would, of course, have been glad to have given you any such information as I could.

I still would not be surprised if before the year is over, you may have occasion to recall a lost opportunity.

If at any time in the future I can be of any service to you, do not hesitate to command me.

1877 Very truly yours,

Ferd Luthy.

Q. Look at the paper now shown you, marked Exhibit 17, and state if you know what it is? A. Yes, sir; it is a letter I received from T. C. du Pont.

Q. Was that letter in answer to your letter of January 3, 1907? A. Yes, sir.

Letter offered and received in evidence as Exhibit 17 and read to the jury as follows:

1878 "Wilmington, Del., Jany. 5th, 1907

Mr. Ferd Luthy, Pres.,
The Merchants Nat. Bank,
Peoria, Ill.

Dear Sir:

First after wishing you a happy and prosperous New Year, I beg to acknowledge receipt of your letter of Jan. 3rd. I think it was entirely proper that you should decline to give any information to those who in the language of today "butt in." If we want anybody to talk to you we will give them a personal letter, and will send somebody big enough to talk. I cannot at this time unfortunately make

a trip West, but I am importantly interested in several places in the West and hope some day to have the pleasure of making your acquaintance in person.

In the meantime, please feel that you will be welcome should you be passing this way and care to drop in.

Yours very truly,

T. C. du Pont,
President. 1880

Q. Do you know what relation Mr. du Pont sustained to the E. I. du Pont de Nemours Powder Company at the time you were negotiating with him? A. He was president of that company, was my understanding.

Q. Do you know what relation Pierre du Pont sustained to that company? A. It was my understanding he was a director, and I think also secretary, but of that I am not sure.

Q. Do you know what relation Mr. Moxham sustained to that company? A. It was my understanding he was a director of the company, and also an official, but I don't know what official position he occupied. 1881

Deposition of R. E. LEWIS, called as a witness on behalf of plaintiff, and having been duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. State your name, occupation and place of residence? A. R. E. Lewis, coal operator, Peoria, Illinois.

1882 *R. E. Lewis—Direct*

Q. Under what name did you operate in coal? A. The Appelgate & Lewis Coal Company.

Q. How long have you been operating under that name? A. About 12 or 13 years.

Q. Where are your mines located? A. The only one we have is at Hanna City, Illinois.

Q. Did you have other mines at any time prior to this date that you do not now have? A. Yes, sir, we had one at Cuba, Illinois; we ceased to operate that mine sometime in the summer of 1908, I
1883 believe.

Q. In other words, from 1903 to 1908, you were operating a mine at Cuba, Ill.? A. Yes, sir.

Q. Were you also operating a mine at Hanna City during that time? A. Part of the time; I think from 1906 on.

Q. I will ask you if you had had any business relations with the Buckeye Powder Company, the plaintiff here? A. Yes, sir.

Q. Did you use any of the powder of the Buckeye Powder Company? A. Yes, sir.

1884 Q. About how many kegs of powder per annum did you consume at both your properties from 1903 to 1908 inclusive? A. I should judge the number of kegs used at the Cuba plant would be about three carloads,—about 2400 kegs per annum; and at the Hanna City mine during that period we would probably use 1800 to 2000 kegs.

Q. Making a total of 3800 or 4000 kegs? A. Yes, sir.

Q. During the time you have just mentioned, between 1903 and 1908, about how many kegs of Buckeye powder did you make use of, if you can recollect? A. I could not tell you.

Q. Was it any great amount? A. No.

Q. Did you purchase powder of any other concern during that period? A. We were buying the du Pont powder at the time.

Q. Did you buy on special order, or did you have a contract with them? A. The greater part of the time we had contracts.

Q. Do you know at this time what those contracts provided? A. What they contained, do you mean.

Q. Do you know what they provided as to price or quantity you should buy, or as to rebates, or any other condition? A. I could not be specific in that.

Q. Have you the original contracts now in your possession? A. No, I have not. 1886

Q. Do you know where they are? A. I think they have been destroyed.

Q. Have you made a search for them? A. Why, no, I have not really searched for them but I have looked through my files.

Q. And did not find them in the usual place? A. No, sir.

Q. You were, however, under contract with the du Pont Powder Company, during the period you have just stated from 1903 to 1908, during the greater portion of that time? A. Yes; that is my recollection. 1887

Q. Did you make any effort during that time to secure the use of the Buckeye powder? A. Yes, sir.

Q. State what was the results of such efforts as you made? A. We made an attempt to use it at our Cuba plant first and we failed to get it in use.

Q. Why did you fail? A. Well, that is a pretty had question to answer. It seemed to be a prejudice against the powder.

Q. What was the nature of that prejudice so far as you could discover? A. Well, I don't know what I could state the exact prejudices. The fact of the matter was this. We attempted to get it started and did use it in some places with good re-

sults and at other places the results were reported adverse, and, so far as I could see, there was no good reason for the adverse opinion.

Q. Did you make some tests yourself for your own satisfaction regarding this powder? A. I am not in a position to say that we made tests ourselves, these things are usually done in this way; we give a practical man a keg of powder and then get his report on it; the number of tons of coal he produced from a given amount of powder, but
1889 so far as supervisiong the tests ourselves there was only one test made and that was at the Hanna City plant; at the Cuba plant I do not think we entered into a test; my recollection is the powder was just handed out to the men and they were asked to report on the result.

Q. What was the result of that kind of a test which you made? A. As I said previously some of the men reported favorably on it and some reported adversely.

Q. As I understand you, these tests you are now
1890 testifying to, were made at your request? A. Yes, we asked the men to use the powder and report on it.

Q. And the reports which came to you were reports made by these men acting under your instructions? A. Yes, sir.

Q. Did you have any special desire or special reason why you desired to use Buckeye powder? A. Yes, sir. At the Cuba plant we were getting a great many screenings and the desire to secure a powder that would reduce the percentage of screenings in our coal was the reason for our using the Buckeye powder at that plant; and at the Hanna plant our reasons for using it—well, it was twofold. In the first place the du Pont powder had to come to us in car loads lots while we could get

the Buckeye powder in 100 keg lots and getting 800 kegs, or car load, from the du Pont people necessitated our holding about $1000 worth of explosives on the premises, while the other amounted to very much less than that and we could get deliveries by the wagon load from the Buckeye people at any time we needed it and it was always fresh. Also, at the Hanna plant, another reason for our wnting to use Buckeye powder was because we thought the du Pont powder was shattering our roof more than 1892
was necessary.

Q. In your experience in testing of the powders yourself did you find that the Buckeye powder produced better results for you in the respects you have just mentioned or worse?

By Mr. Katzenbach:

Q. Did you make any of those tests yourself? A. No, sir.

Mr. Abbott: I did not mean a personal test but tests made under his direction—under the direction of the company he represents. 1893

Q. Did you personally see the tests? A. No, sir.

By Mr. Abbott:

Q. These tests were made under your direction, were they not? A. Yes, sir.

Q. What were the results from such tests as were made under your direction, so far as the use of Buckeye powder was concerned, in overcoming the difficulties which you have just mentioned? (Objection overruled.) A. They reduced the amount of screenings at the Cuba plant—I could not state how much, but it made a better grade of coal; there was

more lump coal and less screenings, and there was less destruction to our roof at the Hanna plant.

Q. As I understand it then you became desirous of using Buckeye powder because you thought it was advantageous to do so? A. We thought it was to our advantage to use it.

Q. You have stated that you were under contract with the du Pont Powder Company for your powder during most of the period between 1903 and 1908.
1893 Do you know from what mill or mills that powder was shipped to you—the powder you bought of the du Pont Powder Company? A. So far as I know it all came from Mooar, Iowa.

Q. I will ask you if the contracts you have reference to were executed by you direct with the du Pont Powder Company or through some agent? A. Through Dooley Brothers.

Q. Where are they located? A. In Peoria, Illinois.

Q. When did you cease to buy powder of the du Pont Powder Co.? A. I do not know whether I can
1896 give the exact date or not. I believe our last contract with Dooley Bros. and the du Pont people was in September, 1911—somewhere near that time; I think that was about the time the contract expired.

Q. During all that time was the powder shipped to you from Mooar, Iowa? A. So far as I know it was; I would not state that was the case because we did not usually pay much attention to that, but my understanding was that was where it came from.

Q. Have you any of your shipping receipts or bills of lading? A. No, we have not that I know of.

Q. After your contract expired with the du Pont Company, of whom did you buy powder? (Objection overruled.) A. Of the Western Powder Manufacturing Company.

Q. Where is its plant located? A. Its office is in

Peoria, Ill. Its plant is at Edwards or near Edwards, Ill.

Q. Do you know whether or not that was the plant formerly known as the Buckeye powder plant? A. That is my understanding.

Cross examination by Mr. Katzenbach:

Q. You have been in the coal mining business some 13 years? A. Yes, sir; 12 or 13.

Q. But you have been in it as a capitalist and not as an experienced miner who has himself mined coal? A. That is true.

Q. Which of you plants was located at such a distance from the mill of the Buckeye Powder Company that it was possible to transport powder in wagons from the mill to your mines? A. The Hanna City plant.

Q. About what distance was the Hanna City mine from the plant of the Buckeye Powder Company? A. I suppose about 4 miles.

Q. That permitted you to buy powder of the Buckeye Powder Company in smaller quantities than you were able to purchase the du Pont powder at Dooley Bros.? A. Yes, sir.

Q. Therefore one of the reasons why you were desirous of purchasing the Buckeye powder was because you could buy it in smaller quantities and thus save a considerable outlay of money for the time being? A. Yes, sir.

Q. During the years from 1903 up to 1908, were you under a continuous contract with Dooley Bros. for supplying you with your annual consumption of powder? A. Pretty much all that time, as I recollect it, now.

Q. Then if you did buy any powder of the Buckeye Powder Co. it was a violation of those con-

tracts? A. Well, no; it is my understanding that the contracts we were under allowed us at any time to try other powders—to test other powders.

Q. Do you say they contained such a stipulation as that? A. I could not say because I don't know.

Q. Didn't they call for the purchase exclusively for your operations of the du Pont powder? A. I do not remember about that.

Q. You say you had certain tests made of the
1901 Buckeye powder in your mine at Cuba and also at Hanna City. Did you personally enter the mine and see any of these tests made? A. No, sir.

Q. You have had no experience personally, I understand, with the shooting of powder in mines? A. No.

Q. You spoke of tests made at Hanna City. Do you recall in what year they were made? A. I could not state that, no.

Q. Do you know by whom that test was made? A. Yes, I think I can tell you. I think it was the representatives of the miners and the representa-
1902 tives of our company combined, that is, it was agreed to try the powder out and each side had their representatives.

Q. You refer to each side—who were the two sides? A. I mean the miners in the plant and our company.

Q. Were there more than two kinds of powder, or two kinds of powder tested? A. Just the du Pont and the Buckeye powders.

Q. What was the result of that test? A. The test was never finished.

Q. Well, it must have reached some conclusion. Did you continue to buy du Pont powder as a result of that test? A. Yes, sir.

Q. Were there any officials, according to your recollection, of the United Mine Workers of Amer-

ica, or any other organization present at that test? A. I don't recall that any of the officials were there at the test; I think the test was carried on by miners appointed by the Pit Committee in charge of the mine.

Q. The Pit Committee selected miners to try out both brands of powder? A. No. They selected one or two men—I don't remember how many—to use the du Pont powder, and we selected one of the number, which was agreeable to them, to use the Buckeye powder; that was the way the test was carried on so far as it went. 1904

Q. Do you recall in what year that test was made? A. I do not.

Q. Prior to the year 1903, how long had you been engaged in mining coal? A. It seems to me since 1900; I think we opened the shaft at Cuba in 1900; that was the first mine we opened, then the Hanna.

Q. Prior to the year 1903, what explosive had you used in your mining operations? A. The du Pont powder.

Q. And the miners were familiar with the use of the du Pont powder? A. They seemed to be. 1905

Q. You summed up the advantages of the Buckeye powder to your company as being because you could get it in smaller quantities and also that it did not shatter the supports of the Hanna mine in the use of it? A. Not the supports—the roof of it.

Q. Also that it made less screenings. Was there any other consideration such as a cheaper price for the Buckeye powder that entered into it? A. No, it is my recollection that the powders were the same price; there was no monetary difference.

Q. Except the monetary difference that resulted from being able to purchase in less quantities? A. Yes, sir, and the other point mentioned in regard to screenings and the destructions of the roof.

1906 *R. E. Lewis—Redirect-Recross*

Q. Are you a stockholder in the Buckeye Powder Company? A. Never.

Re-direct examination by Mr. Abbott:

Q. You have just testified regarding the result of a certain test and said after that test you continued to buy du Pont powder? A. Yes, sir.

Q. You state the test was not completed as I understood you? A. That was at the Hanna plant.

1907 Q. And you stated you went on and continued the use of du Pont powder? A. Yes, sir.

Q. Can you give any reason why you continued to use the du Pont powder? A. The test was stopped before it was completed; the agreement between the miners and the pit committee and ourselves was that we should use one keg of powder and see the number of tons it produced per keg and some of the results in the production of coal as to its grade and the effect on the roof in connection with it; the test did not proceed to the consumption of the entire keg and we concluded that the test—that is, the

1908 manner in which the miners were producing their coal from the du Pont powder was unfair in that they were undercutting their coal and giving the shots a chance to work better than the shots that were being fired by the Buckeye powder, so the test was called off before it was completed.

Re-cross examination by Mr. Katzenbach:

Q. Were you present at this test and did you see it made? A. No.

Q. Do you know that the men handling the du Pont powder were undercutting the coal from anything you personally saw? A. Not from anything I personally saw.

Q. The reason you called the test off was because you were in favor of the Buckeye powder person-

ally, was it not? A. The reason we called the test off was because the Buckeye powder was not getting a fair test with the du Pont powder.

Q. You selected the men you state that went to make the test? A. Yes, sir.

Q. Now, when you say the test was not fair, is that from your own knowledge, or something that somebody reported to you? A. Our superintendent reported it to us.

Q. Where does he live? A. In Peoria, Illinois. 1910

Q. Do you know his address in Peoria? A. I do not but he is standing right back of you.

Deposition of ROBERT MORTON, a witness for the plaintiff, was read as follows:

Direct interrogatories by Mr. Abbott:

Q. State your name and residence? A. Robert Morton, Peoria, Illinois. 1911

Q. How long have you lived in Peoria, Illinois? A. About a year this last time; I have lived in and around Peoria almost all my life.

Q. For the benefit of the jury, they not being present here, state how old you are? A. 46 years of age.

Q. What is your business? A. Coal mining.

Q. How long have you been engaged in that business? A. About 36 or 37 years.

Q. You are a practical miner, that is you yourself have mined coal with your own hands, using all the processes, which are commonly used in mining coal? A. Yes, sir.

Q. Are you familiar with the use of powder in coal operations? A. Yes, sir.

Q. Do you know the mine known as the Applegate & Lewis Coal Mine at Hanna City? A. Yes, sir.

Q. Did you sustain any official relation to that property? A. Yes, sir, I was superintendent.

Q. What were your duties as superintendent? A. I had full charge of all operations above ground and under ground also.

Q. And full charge of the miners in their work?
1913 A. Yes, sir.

Q. You heard the testimony of Mr. Lewis yesterday, did you? A. Yes, sir.

Q. You heard him testify regarding a certain test that was made at the mines during the fall of 1907? A. Yes, sir.

Q. Do you know anything personally about that test? A. Yes, sir.

Q. Did you have anything to do with conducting it? A. Yes, sir.

Q. State in your own way all the facts concerning that matter, just how the test came to be inaug-
1914 urated and what was done? A. For various reasons the company desired to use the Buckeye powder.

Q. At that point let me ask you what those reasons were, if you know? A. I think there were several reasons as nearly as I remember. In the first place, we were getting a large percentage of screenings compared with our lump coal and particularly at the time we tried to introduce the Buckeye powder we were dumping a lot of coal on the ground, that is, we were dumping it out in the open, you understand, and we were very desirous of getting as much lump coal as possible as we knew it would naturally slack up to a certain extent if exposed to the weather. Another reason was we were having considerable trouble with our roof, the miners had considerable difficulty in keeping up the

roof, that is the overhanging strata over the coal and we thought by changing the powder we might overcome some of that. Then, as I understand from Mr. Lewis at the time, another reason why we wished to use Buckeye powder was that we were operating at that time in a small way perhaps about 200 tons a day, or a little more, and we did not require a great amount of powder at that particular time. So he thought by using the Buckeye powder there would be another advantage accruing 1916
from the fact we could get the Buckeye powder in small lots 50, 75 or 100 kegs at a time. We had found that by buying carload lots of du Pont powder we had considerable trouble with the last part of the car, as it would cake in the kegs, get hard from sitting in the powder-house.

Q. Is that a difficulty that often occurs in powders? A. Yes, if it is not used pretty promptly; of course, a keg of powder if the house is reasonably dry will stay all right in the house for three or four months, perhaps, and if it is changed, turned around, turned over once in a while, I suppose it 1917
would stay a long while; I don't know how long, but our house was not any too good to tell the truth and they did not want to go to the trouble of building a new one. Those were the various reasons as I understood why we wished to change powders.

Q. Have you had any previous experience with the Buckeye powder which lead you to believe it would overcome some of these difficulties you have mentioned? A. Not at the time we began to introduce it; it was only an experiment on our part.

Q. Had you any experience previous to the time when this test was undertaken I have spoken of? A. Yes; it was perhaps a year or more after we first began to try the powder before we conducted

Q. And your experience in trying the powder had led you to believe it would meet these difficulties that you have enumerated and overcome them? A. Yes, sir.

Q. Now, you may proceed with your statement regarding the test, which I interrupted you in. A. Previous to the test, five months perhaps before the test occurred, we had used nothing but the Buckeye powder, but gradually there seemed to be a dissatisfaction growing up among the men with
1919 the Buckeye powder and it finally culminated in a demand for a test by the officials of the United Miners.

Q. That is a right which the miners have under their contract with the operators, I believe? A. Yes; I believe so. They did, at that time, have a perfect right to demand a test to be made at that time, anyway. So we finally agreed to make a test, between Mr. Lewis and myself on the part of the company and the officials of the United Miners. We agreed to make a test of a keg of Buckeye pow-
1920 der and a keg of du Pont powder, and it was understood if that test was not conclusive we would go on with several other kegs until we did reach a conclusion. So I selected two men from among the miners and the Pit Committee, representing the miners, selected two others, and together with the Pit Committee we entered the mine and selected two places adjoining one another—what is called rooms, where we would try the powders—they were to try the du Pont powder in one room and we were to try the Buckeye powder in the other and to start that I took personal charge of the placing of the shots of the Buckeye powder because I was representing the company's side and naturally I wanted to see the powder given a fair test; so for two or three days I made it my business to go in

these every day, probably two or three times a day, and instruct the two men—Parry was the man who was really in charge of the work and was doing the work, while another man, named Kepper, was helping him. I instructed them in the placing of the shots, the angle the holes should be drilled at, and the depth of the holes and the amount of powder that should be given to each shot. We proceeded along very nicely for, I think, about four or five days, when one day I went in there, as usual, and having a natural inclination to know what the other 1922
boys were doing in the adjoining room, I had been in the habit of going in there every day where they were using the du Pont powder, and this day, when I went into their place, I discovered they were undermining the coal; they had two shots undermined from 18 inches to 2 feet deep, clear along the length of the shots; I said, "Now, if you boys are so anxious to show that du Pont powder can produce more coal than the Buckeye that you are going to mine and wedge this coal, we will quit right now," and I stopped the test right there.

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Q. Describe in such detail as you think necessary to make it clear just what that undermining process is so when this deposition is read to the jury they will understand what you have in mind? A. I don't know just how I would go about it to make it clear to any one who never saw a mine, but, however, I will state that the coal vein at Hanna runs something over four feet in thickness, above the coal there is a slate roof and underneath the coal is what is called a seam of fire-clay. What I mean by undermining the coal is, the men took their picks and dug the clay out from underneath the seam proper of the coal, to a depth of from 18 inches to 2 feet, thus relieving the shot the same as though it had been entirely under the cut.

1924 In machine mining we call it undercutting the coal when we have machines that under-cut the full depth of the coal we are going to blast down; they were simply undercutting part of the shot while the coal would be back on the solid; they would have about four feet of thickness of coal in front of their shot when it was really undercut fully one-half the distance.

Q. The result of the undercutting is that the coal has a tendency to fall of its own weight when
1925 loosened? (Objection overruled.) A. It requires less powder.

Q. You have spoken of undercutting as being a method which is used when you are mining with machines? A. Yes, sir.

Q. State what the advantages are of undercutting by machines as against the method of shooting the powder without the use of machines? A. The advantages are several in nature. In the first place, in shooting coal off the solid, or without being undercut, it makes a certain percentage of screen-
1926 ings where, if it is undercut it don't make such a large percentage of screenings. The percentage of screenings is considerably less where coal is undercut than where it is shot from the solid; also it requires less powder from the fact that when it is undercut all that is necessary is to break the strata while, when shooting it off the solid you not only have to break the strata, but squeeze it out between the bottom and roof.

Q. Then the method by which the committee representing the du Pont powder was conducting the test had the same advantage as if a machine was being used in connection with the powder? (Objection overruled.) A. So far as undercutting went.

Q. If you had been using a machine to undercut,

about how many tons of coal would a keg of powder have produced? A. We find in this same mine by undercutting with machines that we produce an average of about 125 tons per keg.

Q. About how many tons of coal would you get out of a keg of powder where you did not undermine? A. We estimate our records show that we would produce an average of about 18 tons per keg of the du Pont powder. I am speaking of shooting on the solid. While we were shooting on the solid, we found we could produce an average of about 18 1928
tons per keg with the du Pont powder and an average of about 22 or 23 tons per keg with the Buckeye powder.

Q. Have you any knowledge or information in regard to the reasons why the men who were representing the du Pont powder proceeded to undercut and use the method of conducting the test? Objection sustained.)

Q. Referring once more to the manner of the use of the Buckeye powder in your mine, and your desire to use it—you spoke of its benefit so far as 1929
to preserving your roof was concerned—what effect has the destruction of the roof upon the cost of producing coal? (Objection overruled.) A. The effect is felt in many different ways. In the first place, if the roof is broken and mixed with the coal, which it invariably does, when broken, and the miner, if not particularly careful in loading, will get his roof mixed with the coal and destroy the marketable quality of the coal. In the second place, if the roof is broken, it is always a bill of expense to the company because the miner does not feel he is under any obligation to pick up that roof material unless he is paid for it, and it requires more labor in timbering and very frequently the place has to be turned over, that is, narrowed down to 7 or 8 feet wide, for instance, and turned over and paid for at

the usual rate of room turning, which entails considerable expense.

Q. Did you have at any time any comparative statement of the results of your use of Buckeye powder in connection with du Pont powder as to the difference in quantity of screenings produced? A. The company kept tab on that, they kept a record of the amount of coal produced at different periods and the percentage of screenings, as compared with the percentage of lump, and we found that the per-

1931 centage of screenings was considerable less in the use of Buckeye powder than the du Pont powder at that mine.

Q. Can you state at this time about how much less? A. I think about 10 per cent.

Q. What is the advantage, if any, in the price of coal which is free from screenings over coal that is not free from screenings? (Objection overruled.) A. I think throughout the year there would be a difference of about $1.00 a ton.

Q. State whether or not there is any conflict of

1932 interest between the miner and the coal operator as a rule concerning the method by which the coal is blown down. That is to say, whether the coal is large or small? A. I believe I understand your question. Under our present agreement, which same agreement has existed for a number of years, it makes but very little, if any, difference to the miner what the condition of the coal is so far as his earning capacity is concerned, after it is shot, whether it is in small coal or lumps from the fact he is paid on what is known as the mine run basis, so there is very few miners that care very much what quality of coal they produce.

Q. While it matters very materially to the coal operator? A. Yes, sir.

Q. Would that difference in interest influence the

miner in desiring a powder which would produce the best results in blowing the coal out, rather than one that would produce the best results to the coal operator? (Objection sustained.)

Q. Who succeeded you as superintendent at the Appelgate & Lewis mine? A. Andrew Morton.

Q. Is he the Superintendent at the present time? A. Yes, sir.

Q. When did he take the position? A. In April, 1909.

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Q. Was he employed at the mine before that in any other capacity? A. No, sir.

Q. Where was he employed before that? A. At the Maplewood Coal Company at Farmington, Illinois.

Cross examination by Mr. Katzenbach:

Q. When did you become Superintendent of the Hanna City mine of Applegate & Lewis? A. In fact, I bought the property for them in the first place; I was Superintendent for them at Cuba before I went to the Hanna mines; I don't remember just the exact date when we bought that property, or when they bought it, but I had charge of it from the time they bought it, which was, I think, about 1904 or 1905.

1935

Q. Prior to the purchase of the Hanna Mine by Applegate & Lewis, had it been operated as a mine? A. Yes, sir.

Q. Was it substaintially the same miners engaged to work in it after the title had been acquired by Applegate & Lewis as worked before? A. Yes, sir.

Q. When you took charge as Superintendent, what powder was in use at the mine? A. I think the du Pont powder.

Q. Do you know how long that mine had been

operated prior to the purchase by Applegate & Lewis? A. I think about 25 years.

Q. Have you any knowledge as to what powder was in use in the mine, prior to the purchase of it by Applegate & Lewis? A. I think they used several different brands of powder there during the life of the mine.

Q. Do you know of your own knowledge what powder was used? A. I know I was in charge of
1937 this mine some years previous to the purchase of the mine by the Applegate & Lewis Company while the Newsam Brothers operated it under lease and we used Laffin & Rand powder part of the time and du Pont powder part of the time.

Q. Your employers were desirous of introducing the powder of the Buckeye Company into this mine of Applegate & Lewis on account of being able to get it in smaller quantities, were they not? A. That was one reason.

Q. Was this a large vein of coal in this mine, or a comparatively narrow and small vein? A. It
1938 averaged about four feet, four inches in thickness.

Q. Now a mine using machines for the purpose of undercutting the coal, that is, the taking of the coal away from the vein of coal—interrupted—A. They used machines in this mine at the present time.

Q. In the fall of 1907, were they using machines in the mine? A. No, sir.

Q. Then when the coal was undercut it would have to be done with a pick or shovel, would it not? A. With a miners pick. It could not be done with a shovel.

Q. With a miners pick and then shoveled out? A. Well, they pick it out with a pick as they undermine it.

Q. By the undermining process, the coal would be removed by a blast of powder in larger lumps,

would it not, than if no undercutting had been done? A. Yes, if the right amount of powder was given to the shot.

Q. So, then, by undercutting the coal would come out in large lumps, would it not? A. If the shot was properly powdered, yes, sir.

Q. In the fall of 1907, you were storing considerable coal above ground before transporting it, was you not? A. Not in the fall; during the summer months we were, beginning along about May 1940
and extending up until the latter part of August—perhaps the middle of August.

Q. In the fall of 1907, which you will recall was the panic year, was not there a good deal of coal stored above ground that fall? A. I could not say as to that except at our own mine we stored approximately 3,000 tons for local use.

Q. The purpose of introducing machines in mining operations for the undercutting is to get out better lump coal, is it not? A. That is one of the purposes.

Q. A big run, or undercutting with a pick, would 1941
also produce larger lump coal, would it not? A. If it was undercut to the same extent made with a machine.

Q. So, then, substantially you would get the same result from undercutting with a pick you would get undercutting with a machine? A. If the same amount of undercutting was done, and the blasting done in the same way.

Q. Are the miners examined as to their ability for doing the work and are they licensed in this district? A. They are throughout the state of Illinois at the present time.

Q. In the fall of 1907, how were the miners paid —were they paid for the number of tons mined, or were they paid by the day? A. They were paid by the ton.

Q. For the number of tons mined? A. Yes, of mine run coal.

Q. The powder—was that supplied by the operators of the mine? A. It was sold to the miners by the operators; yes, sir.

Q. But the miners had to pay the operators a certain price per keg for the powder? A. Yes, sir.

Q. And therefore it would be an advantage to the miner to get a powder that would produce as many tons of coal as possible from a given quantity
1943 of powder? A. Yes, it would seem so.

Q. In the fall of 1907, did the miners operating in the mine have a right to demand a test of powder? A. I am not sure whether there was anything in the agreement between the United Mine Workers and the Operators at that time, covering that point, but they assumed the right, whether it was in the agreement or not, and it was clearly within their rights to demand a test if they felt dissatisfied with the powder at any time.

Q. That is to say, the powder that was being
1944 supplied by the operators, if they were dissatisfied with that, they had a right to demand a test? A. Yes, sir.

Q. Were the miners employed in the Hanna City mine experienced men? A. The majority of them were.

Q. And were what you would call good expert miners? A. Yes, sir.

Q. And fully as good as the average miners in other mines located in this district? A. Yes, sir.

Q. It was considered to be skillful work on the part of a miner to undercut his work, was it not? A. I never knew it to be done except in the one instance I have related in the Hanna mine.

Q. Would you say that a miner who undercuts his work was not an experienced miner? A. No, sir; I would not.

Q. It was not anything that deserved censure by the operator, was it? A. No, indeed.

Q. In fact, they were very glad to have it done? A. If they could have induced the miners to undercut the coal they certainly would have done it.

Q. You were familiar with the desire of your employers to introduce the Buckeye powder in the Hanna mine, were you not? A. Yes, sir.

Q. And had various talks with Lewis with regard to the introduction of the powder? A. Yes, sir. 1946

Q. This test you speak of in the fall of 1907, was a test conducted by you as Superintendent of the mines for the owners having charge of the Buckeye powder, was it not? A. I represented the company in that respect so far as the selection of those two men was concerned, who actually used the powder under my directions, though I am free to say now, so far as I was personally concerned, I desired to see a fair test made; it was a matter of personal interest to me alone; I wanted to see whether or not my judgmnt was good as between the two powders. 1947

Q. You were interested in carrying out the wishes of your employers as to the Buckeye powder, were you not? A. Really, I had no feeling on the subject, except to see the best powder used in that mine that could possibly be procured.

Q. You went into the room from time to time where the Buckeye powder was being used, and you, with your experience, directed where the blasts of powder were to be located and the angle of the blast, did you not, for the Buckeye powder? A. Yes, sir.

Q. Did you enter the room where the Du Pont powder was being used in this test and likewise direct where the blasts were to be put and the angle

of the blasts? A. Yes, sir; I did; I went in and advised them a number of times as to where to put the blasts and chided them when I saw they were making a mistake; several times I saw they could have used better judgment.

Q. Who selected the miners that were to make the test with the Du Pont powder? A. The Pit Committee of the mine.

Q. There was not any representatives of the Du Pont Powder Company directing the test at all, was there? A. No, sir.

Q. Now, then, after this test had gone on for some time, it was stopped by your orders, was it not? A. Yes, sir.

Q. After it was stopped by your orders, what was the result in the mine among the miners as to the powder to be used? A. We continued to use both powders; we carried both powders in stock in the house and any miner who desired to use that powder we sent him Du Pont powder.

Q. What did the majority of the miners desire in the mine? A. They seemed to be about evenly divided; I should say they were evenly divided.

Q. How many miners did you have in that mine? A. I think at that time we had 40 or 45 miners.

Q. And you say they were evenly divided? A. Yes, the records of the mine show who were using the Du Pont, and who was using the Buckeye.

Q. Who has those records? A. The company.

Q. Did you as Superintendent direct at anything during your superintendency any other tests than the one you have referred to? A. No, that was the only test that we had that could be called a test in any sense of the word.

Q. The miners you selected to use the Buckeye Company powder in this test were miners that had

used the same powder before? A. One of them had.

Q. Were they especially selected by you as experienced and competent men—the best you had? A. I felt satisfied Mr. Parry would follow instructions in the use of the powder and do what was fair with both powders.

Q. Was he using both powders? A. He had used both powders.

Q. But he was selected especially by you to use the Buckeye powder in this test? A. Yes, because 1952
I knew he was fair minded, at least I felt he was.

Q. You also knew he was an experienced miner, I presume? A. Yes, he was an experienced miner.

Q. What was the name of the other miner you selected? A. George Kepper; he was just a boy; I would not call him a practical miner at that time, for he just did the loading and he was very much opposed to the Buckeye powder—I will say that too. In fact, all the boys were opposed to it for some reason.

Q. At the time the test was called off, there had 1953
been more coal mined by the du Pont powder than by the Buckeye powder, had there not? A. No, I don't think so; I think the daily bulletin showed that the men using Buckeye powder up to that date had produced the greater amount of coal, while both had considerable coal loose in their places and it was hard to determine at that time which powder had produced the most coal.

Q. Was there any official action taken by the United Mine Workers of America with reference to this test, either through the parent body or local body? A. Yes, sir.

Q. What action was that? A. This test was agreed on before the test was inaugurated by the officials representing the United Mine Workers.

Q. What action did they take after the test had been commenced and stopped? A. The thing went along, as I have stated, we continuing to use both the Buckeye and du Pont powders, for I think a month or two, but a great deal of agitation kept up against the Buckeye powder until it resulted in the calling of the officials there; by that I mean they called John Walker and Mr. Spenney and I think, Mr. Edwards, who was at that time Board Member from this District, and after a discussion of the
1955 case the whole affair, they demanded that we discontinue the use of the Buckeye powder on behalf of the miners, and Mr. Lewis had gotten so sick and tired of the while controversy, one way and the other, and I had myself become fully disgusted with the whole business, and I advised Mr. Lewis to drop the whole thing, and let them use any kind of powder they pleased, that if they did not want any more Buckeye powder to go down in the mine to let it go by the Board; there was such an agitation and uproar every time a man had a bad shot who was using
1956 Buckeye powder, and if the shot did not work exactly as it ought to, it was the fault of the Buckeye powder; if it blew the coal all out the damned powder was too strong; if it left it stand the damned powder was not strong enough and if it happened to break the slate the damned powder went into the roof.

Q. The fact is, the powder did break the roof? A. Certainly, if you drill a hole up against the roof with any powder it will break it.

Q. Who demanded this test in the beginning? A. The officials of the United Mine Workers.

Q. Did the operators have what is known as a commissioner? A. I don't think they did at that time; if they did he was not interested in this case, as I remember.

Q. Did you know a Mr. Justice? A. Yes.

Q. Was he the operator's commissioner at this time? A. He may have been, but he was not connected with this test in any way to my knowledge.

Redirect examination by Mr. Abbott:

Qo Speaking of the complaints which were made against the Buckeye powder, which you have just related, you said that once in a while a miner complained it destroyed the roof—was that due to the placing of the shot, the manner of placing the shot, or was it due to the powder? A. The breaks in the roof were almost invariably caused by the placing of the shot. 1958

Q. You say that the mine officials demanded that the use of the Buckeye powder be discontinued—what reason did they give for making that demand? (Objection overruled.) A. The ground they took was that the powder was not as satisfactory to the miners there; Mr. Walker made the statement that the men might as well fill a hole full of lime as attempt to blow a hole with it, as to attempt to blow it with Buckeye powder. 1959

Q. Do you know whether or not Mr. Walker had ever used Buckeye powder himself? A. I do not.

Q. Did any of the other officials to your knowledge that co-operated in making the demand ever use Buckeye powder? A. I believe Mr. Spinney had used it at Farmington.

Q. Did Spinney make any comments as to the quality of the powder? A. Yes, he did not think it was as good as the du Pont powder; he did not think it could be used in this coal.

Q. What would have been the result of a disobedience of that order in the natural course of things? (Objection overruled.) A. If the company had in-

sisted upon the use of Buckeye powder, the mines would have been thrown idle, because the miners would have refused to work in it.

Q. Do you mean by a strike? A. Yes, sir.

Q. Do you know of your own knowledge of any influence or any agitation by anybody representing the du Pont powder to produce that demand—bring it about? (Objection overruled). A. Yes, sir.

Q. State what it was? (Objection overruled.) A.

1961 A. I know that there was a constant agitation against the use of Buckeye powder from the very start.

Q. I am speaking now more particularly of the agitation with reference to this particular demand? A. What particular demand?

Q. I mean this demand that was made upon you to cease the use of Buckeye powder by the officials of the union? A. When I declared the test off and gave my reasons for doing so, to the Pit Committee, there was nothing more said; they admitted I was justified in declaring the test off. (Objection over-

1962 ruled.)

By Mr. Abbott:

Q. You may proceed. A. As there was no more said about it we continued to use both brands of powder until perhaps two months after the test, when the State Officials arrived on the scene; during that two months, there had been a constant agitation in the mine against the use of the Buckeye powder, which culminated as I stated.

Q. Do you know Mr. Moffatt? A. Yes.

Q. Do you know what relation of any he sustained at that time with the du Pont Powder Company? A. I believe he was interested as an agent in the distribution of the du Pont powder.

Q. Did you have any knowledge at that time of any activities by him with the men employed in your mine concerning the use of Buckeye powder? (Objection overruled.)

Q. Did you have any knowledge at that time of any activities by him with the men employed in your mine concerning the use of Buckeye powder? A. I know that Mr. Moffatt was very good friends with most of the miners throughout the district.

1964

Re-cross examination by Mr. Katzenbach:

Q. There was agitation for the use of Buckeye powder in that mine by some of the miners, was there not? A. Some of the miners were favorable to the Buckeye powder, yes, sir.

EDWARD ALVA MOFFATT, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows: 1965

Direct examination by Mr. Abbott:

Q. Mr. Moffatt, where do you live? A. In Peoria.

Q. How long have you resided in Peoria? A. I think about seven years.

Q. Seven years? A. Yes, sir; I am not sure of the time.

Q. Where did you reside previous to going to Peoria? A. In Bernardsville.

Q. Bernardsville, Illinois? A. Yes, sir, about five miles from Peoria.

Q. What is your business? A. Now?

Q. Yes. A. I am employed by the Dooley Brothers at Peoria.

Q. How long have you been employed by Dooley Brothers? A. I started to work for them on April 1st, 1898.

Q. What business are Dooley Brothers engaged in? A. They are engaged in the retail coal business and the miners' supply houses.

Q. Do they handle black blasting powder? A. Yes, sir.

Q. How long have they handled it? A. They were handling black blasting powder when I went
1967 to work for them.

Q. Is it an incorporation? A. Yes, sir.

Q. How long has it been an incorporation? A. I can tell you what I think; that is, as near to it as—

Q. That is what we want? A. Three or four or five years, along there.

Q. The corporation is recently organized, so far as your experience with them goes? A. Yes, I think it was just the brothers then, a partnership.

Q. Are you a stockholder in the corporation? A. Yes, sir.

1968 Q. Were you employed by Dooley Brothers during the years 1903 to 1908? A. Yes, sir.

Q. In what capacity? A. Well, as a salesman, to sell whatever they had to sell, black powder, dynamite, and fuse, and caps, and miners' supplies, lamps,—oh, they have a big line, too numerous to mention.

Q. What was your business before you entered the employ of Dooley Brothers? A. Well, right previous to that time, I was mining coal.

Q. You were a practical coal miner? A. Yes, sir.

Q. Were you a member of the Miners' Union? A. Yes, sir.

Q. Are you a member of the Miners' Union now? A. No, sir.

Q. When did you cease your membership in the

Miners' Union? A. Well, I don't remember as to when, but I wasn't in the organization very long after I started to work for them.

Q. What local did you belong to? A. I joined first, Local No. 1007.

Q. What was that known as, other than by number; where is it located? A. It was located at that time—it was a little old house alongside of the railroad track on the Mill Road.

Q. What particular district or territory did that local take in? A. The Team Mines, at that time. 1970

Q. By Team Mines, you mean what are sometimes called country banks? A. Yes, sir.

Q. Then, after your membership in that local, what local did you join? A. I think the number is 744, as I remember it; that was just a transfer card; that was at Bernardsville.

Q. What is known as the Bernardsville Local? A. Yes, sir.

Q. What territory does that comprise, or did that comprise during your membership? A. I never attended any meetings, so I don't hardly know; but 1971
I know one mine that it covered, and that was the Shoal Mine at that time.

Q. Do you know how numerous the membership was? A. No, I don't know.

Q. Don't you know how many members? A. No, I don't know.

Q. When you entered the employ of Dooley Brothers, were there other persons engaged in handling black blasting powder in Peoria? A. Yes, sir.

Q. What other persons were there at that time? A. C. J. Off, Oakford and Fahnnestock; I think Walker Hardware Company, and the Peoria Fuel Company, as I remember it; there may have been more.

Q. Now, what kind of black blasting powder did C. J. Off handle, what make or brand? A. du Pont blasting powder.

Q. And Oakford and Fahnnestock, what kind did they handle? A. Hazard.

Q. And the Peoria Fuel Company? A. Laflin and Rand.

Q. And Dooley Brothers? A. Phoenix and Equitable.

1973 Q. And that condition continued until how long after you began selling black blasting powder? A. I am not positive as to how many years, but it was until they started to handle du Pont; they didn't handle any other powder until they handled du Pont.

Q. When did Dooley Brothers begin handling du Pont powder? A. I think in 1903, some time.

Q. At that time did the Peoria Fuel Company continue to handle the brand of powder that it had been handling? A. I think so.

Q. You think they did continue? A. I am not
1974 positive as to whether they did or not; they only had one customer that I know of before that, in this vicinity.

Q. Who was that? A. That was the Standard Coal Company.

Q. The Oakford and Fahnnestock people; did they continue to handle black blasting powder? A. Yes, certainly.

Q. What kind did they continue to handle? A. I presume the Hazard.

Q. And C. J. Off & Company, did they continue? A. They handled du Pont.

Q. So that you did not have the exclusive handling of du Pont powder? A. No; I should say not.

Q. During the time that you have been in the employ of Dooley Brothers, from whom have you

received your compensation? A. Dooley Brothers.

Q. Always, down to date? A. Yes, sir.

Q. Do you know where the mines of the Clark Coke & Coal Company are located? A. Yes, sir.

Q. What local includes those mines, if you know? A. I don't know.

Q. What local included them during the years 1903 and 1909? A. I don't know.

Q. Where do Dooley Brothers keep their stock of powder? A. They keep it at what is known as Barnewalt Farm. 1976

Q. How far is that from Peoria? A. About four miles from Union Station.

Q. Is that magazine owned by the Dooley Brothers Company? A. Not now, I don't think.

Q. Who does own it? A. Well, I think the du Pont Powder Company owns the magazine.

Q. How long have they owned it? A. I don't know; they built it.

Q. When was it built? A. After Dooley Brothers started handling du Pont powder.

Q. And that was about 1903, you say? A. Yes; 1977
but it was some time after that before it was built; Dooley Brothers leased until they got a magazine; they had been having Barnewalt's magazine, and they continued to lease it until other arrangements were made.

Q. Since that time, it has been owned by the du Pont Powder Company? A. That is my understanding of it.

Q. Now, you have been giving some attention, have you not, to the pending suit, the action which is now on trial? A. Yes, sir.

Q. Are you interested in the result of the suit? A. No, sir.

Q. Not at all? A. Not one bit.

Q. Whom have you been representing in the at-

1978 *Pierre S. du Pont—Recalled—Direct*

tention which you have given to this suit? A. Dooley Brothers.

Q. They still continue to pay your salary, just the same? A. Yes, sir.

PIERRE S. DU PONT, recalled as a witness for plaintiff, testified as follows:

1979 *Direct examination by Mr. Abbott:*

Q. Mr. du Pont I show you Plaintiffs' Identifications 1093 and 1094, which you produced here some time ago. Are you familiar with the contents? A. Yes, sir.

Q. This is headed "Companies owned by the Eastern Dynamite Company, August 1, 1903." Were there any of these companies acquired or controlled by the Eastern Dynamite Company itself? A. I will have to refer to the list. I have a copy of it here.

1980 Q. I will put that question in another way. You set forth here after the name of the company, the number of shares of stock that are held by these various companies. Will you state generally, whether or not the shares of stock which are set forth were, any of them, controlling interests in the particular companies? A. May I see the list? I have not got a copy.

Q. Yes. Not knowing what the total capital stock was, it is difficult to determine whether the shares there are controlling? A. I believe that these shares are all the stock of these companies, excepting possibly the Hecla Powder Company, the James MacBeth Company. I believe in the latter case that was all the stock.

Q. But as to those two companies, was the stock

that you have noted there a controlling interest? A. I believe so, yes; in every case, with possibly the exception of the Hecla.

(Documents received and marked Plaintiff's Exhibits 1093 and 1094 respectively.)

Q. Now, I call your attention to Plaintiff's Identification 1095, 1096 and 1097. Will you look at those? (Handing to witness.) A. I think I have the copies of those. I am not sure. I have that 1982
(indicating) one.

Q. They are all named as one here? A. Yes, I have a copy of that here.

Q. This is headed "Plants March 1st, 1902, to September 18, 1908." Then you give a separate statement as to plants that were owned by certain companies, taking for instance, E. I. du Pont de Nemours Company's plant, owned directly or stock ownership, March 1st, 1902. Now, were those plants which had been previously owned and held by the du Pont interests, or were they plants which had been acquired through some of the other companies, like the Laflin & Rand Company, or the Delaware Securities Company? A. These plants owned directly—some were constructed by E. I. du Pont de Nemours & Company in previous years, and others were acquired through purchase. 1983

Q. What I am trying to get at is to find out what portion of these plants, if any, were owned by the E. I. du Pont partnership, before your company acquired those interests? A. Well, all of them were.

Q. All of them were? A. They were either owned directly or through stock ownership. I have included in the stock ownership those plants which were controlled before, though all the stock was not owned.

Q. Now, then, take the plants owned by Laflin & Rand Powder Company March 1st, 1902, and acquired later by E. I. du Pont de Nemours Powder Company, can you state when those particular plants were acquired by the Powder Company? A. When the stock of the Laflin & Rand Powder Company was acquired.

Q. And that was what date? A. The Delaware Securities Company purchased that stock originally in the year 1902 or 1903—1902, I believe, and the Delaware Securities stock was in turn owned by E. I. du Pont de Nemours & Company.

1985

Q. Now, when did the Powder Company acquire that? A. The Powder Company acquired the stock of the Laflin & Rand Powder Company, I should think, as late as 1908.

Q. They had at that time—you mean to say that up until 1908, the Laflin & Rand Powder Company remained the nominal owner of these plants? A. I believe so, yes, and the title was transferred about that date.

1986

Q. But the stock of the Laflin & Rand Powder Company through the Delaware Securities Company, was already owned by the Powder Company, was it not, from the time of its organization? A. Yes, that was acquired originally by E. I. du Pont de Nemours & Company in the year 1902.

Q. And then by the Powder Company at its organization? A. Yes.

Q. So that it had control of those plants, through stock ownership of the Laflin & Rand Powder Company? A. Yes, sir.

Q. Now, take the plant owned and controlled jointly by du Pont and Laflin & Rand Powder Company, does or does not the same condition as to ownership apply to those plants as you have just testified to with reference to the Laflin & Rand

plant? A. Yes; the control through the Laflin & Rand Company was acquired when the Laflin & Rand stock was acquired through the Delaware Securities Company in 1902.

Q. And all of these plants that are named under that particular subdivision, were plants which were acquired by the Powder Company subsequently—the actual title to them, but in the first place by its control of the stock ownership of Laflin & Rand, together with the du Pont Companies? A. Yes; a great many of these plants were owned through the Eastern Dynamite Company, which was a partnership corporation of Laflin & Rand and du Pont. 1988

Q. Take the plants acquired by E. I. du Pont de Nemours & Company, or E. I. du Pont de Nemours Powder Company, by purchase after March 1st, 1902. Now, how soon after March 1st, 1902, were these plants acquired? Of course, they could not have been acquired by the Powder Company previous to 1903? A. I am not quite sure as to the date, but they were all acquired in the years 1902 and 1903. I am almost certain, either by E. I. du Pont de Nemours & Company or E. I. du Pont de Nemours Powder Company. 1989

Q. Plants constructed by E. I. du Pont de Nemours & Company, and E. I. du Pont Powder Company, after March 1st, 1902—can you tell about the date that those plants were constructed? A. Well, with the exception of the plant at Louviers, Colorado, I think they were all constructed prior to 1908.

Q. Were any of them constructed in 1903? A. I believe Connable was started and the Nemours plants followed very closely, I think. That was about 1903 or 1904.

Q. How about 1904. Were any of those constructed at that time? A. I am not certain about

those dates. If it is material I would have to refer to the record to find them. I think they were all constructed prior to 1908, excepting Louviers.

Q. Perhaps this general question will cover it: These plants were constructed during the period from 1903 to 1908? A. I believe so.

Q. Covering at various times? A. Yes, sir.

(Documents received and marked Plaintiff's Exhibits 1095, 1096 and 1097, respectively.)

1991

Q. You filed an answer in the case of the United States Government against E. I. du Pont de Nemours & Company and others, did you not? A. Our company did, yes.

Q. Well, you yourself were a defendant in that case? A. Yes.

Q. And you signed the joint answer with E. I. du Pont de Nemours & Company and others? A. Yes, sir.

1992 Q. When you first purchased these interests (you and Mr. T. C. du Pont and Mr. Alexis I. du Pont—organized your company)—will you state whether or not at that time it was in part your purpose or policy to acquire the title to the various corporations, not only through stock ownership, but through purchase of their physical assets—of the various corporations which you had acquired and which you subsequently acquired? Do you understand my question? A. Not exactly, no.

Q. The idea is to ascertain what your plan and purpose was at the time when you acquired—when you organized E. I. du Pont de Nemours & Company and took over the interests of the partnership, with reference to the other interests which you had in mind, like the Delaware Securities Com-

pany and the Laflin & Rand interests, and other interests which you subsequently acquired, as to whether or not your purpose and policy was to take them over, not only so far as stock ownership was concerned, but also to acquire their physical assets? A. No, I should say not. We had no information upon which to base a plan of that kind.

Q. You at some time, about that time, did enter upon such a policy as that, did you not? A. Yes, sir; it was after its acquisition.

Q. After the acquisition of what? A. The property of E. I. du Pont de Nemours & Company. 1994

Q. Was it after the acquisition or the organization of the Delaware Securities Company, and the Delaware Investment Company, and the California Investment Company? A. Well, the purchase of those properties was not under a general plan, that I remember. Each transaction was unto itself.

Q. Well, you found at the time when you acquired these various interests, that you had a number of separate organizations; each of them maintained separate offices and separate selling agents and elaborate systems of accounting, and this you found to be an expensive and inconvenient method of conducting the business of those companies, did you not? (Objection overruled.) A. Yes, sir. 1995

Q. Then, did you not shortly afterwards determine to adopt the policy of vesting the entire ownership, management, and control in each of the said manufacturing plants and all of the properties thus owned, into one corporation which should alone perform such functions? (Objection overruled.) A. Yes, if you refer to the property that we then owned.

Q. Well, did that apply to such properties as you afterwards acquired, before the organization of the defendant, the du Pont Powder Company?

A. I think we had no general plan for the acquisition of property.

Q. Well, now, did you then reach any conclusion as to whether it was possible to bring about this consolidation immediately, or whether it would take a considerable period of time to do it? A. I cannot remember what we thought at that time.

Q. Well, then, I will say, did you not, early in 1903, determine to bring about such a condition of affairs as soon as it could properly be done and
1997 with this end in view, did you not determine to organize one corporation which should be large enough and have capitalization sufficient to attain that object? (Objection sustained.)

Q. When you organized the E. I. du Pont de Nemours Powder Company, was or was it not your plan and policy to take over all of the physical, as well as the stock assets of the various corporations which you had at that time acquired some interest in? A. The original plan was to take over the stocks of the corporation owning the assets only.

1998 Q. You had no thought at that time of taking over the physical assets? A. I think not at the time of the organization.

Q. Did you ever read this answer that I called your attention to in the Government case? A. Well, not very recently. I have within the last month or two, I think.

Q. You authorized the answer to be put in, did you? You authorized such a nanswer to be made in your behalf? A. Yes, surely.

Q. If this answer states to the contrary, then it would not be in accordance with the fact, as you understand it? (Objection sustained.)

Q. And when was it that you concluded it was desirable to take over the physical assets of the various corporations which you had theretofore ac-

quired an interest in, and place them in the possession of the E. I. du Pont de Nemours Powder Company? A. I think about the year 1904.

Q. Up to that time, had a portion of these various interests been transferred to and held by what is known as the E. I. du Pont Company? A. The E. I. du Pont Company was formed prior to the organization, or about the time of the organization of the E. I. du Pont de Nemours Powder Company, and that corporation, E. I. du Pont Company received the physical assets owned directly by the 2000
former E. I. du Pont de Nemours & Company, so when the property of the E. I. du Pont de Nemours Company was transferred to the Powder Company, there were stocks of corporations only transferred. No physical property was transferred direct.

Q. Subsequently, however, were or were not all of the assets of the E. I. du Pont Company transferred to the Powder Company? A. Subsequently they were, yes.

Q. Do you know about what date that was? A. My recollection is about 1908.

Q. Now, I show you a paper writing and ask 2001
you to examine it and state whether you know what that is (handing to witness)? A. That seems to be a circular in regard to the issue of 4½ thirty year gold bonds of the E. I. du Pont Powder Company.

Q. Do you know anything about that having been authorized? A. Yes; I think I remember it.

Q. There appears to be some writing in there, with your name attached to it. Is that authorized by you? A. I should say yes.

Q. That was a statement made up by your authority, or by you? A. Yes, sir.

(The entire paper was offered in evidence. Objected to. After argument, the Court admitted the following portions thereof, which were read to the jury):

"ORGANIZATION AND HISTORY.

The E. I. du Pont de Nemours Company was organized under the laws of the State of New Jersey on May 19, 1903, for the purpose of consolidating
2003 into one corporation the numerous interests of the E. I. du Pont de Nemours & Company, which corporation and its predecessor, a partnership of like name, had been engaged in the manufacture and sale of explosives for over one hundred years, having started business in the year 1802. The record of the company has been one of steady and conservative progress as measured both by financial returns to its owners and by the growth of the business. The company is constantly perfecting improvements in its products and methods of manu-
2004 facture, and its experimental departments in these lines are especially well equipped. The duration of the corporation is perpetual."

"COMPARATIVE INCOME ACCOUNT

December 31	1904	1905	1906	1907	1908
Gross Receipts	$26,103,869	$27,655,381	$30,751,726	$31,661,939	$28,027,094
Net earnings	4,438,701	5,063,612	5,332,802	3,929,509	4,929,251
Extraordinary adjustments and profit and loss on sale of real estate, securities, etc.	*109,939	*97,259	66,110	387,816	129,312
Interest on Outstanding Bonds...	307,245	266,670	535,819	676,427	729,266
Preferred Stock Dividends.....	988,716	1,136,801	989,236	735,637	771,078
Common Stock Dividends	112,081	821,390	1,533,826	1,741,392	1,786,738
Interest and adjustments and dividends on subsidiary companies' stocks	194,958	42,287	240,145	*68,006	74,971
Total deductions from net earnings	$1,493,061	$2,169,889	$3,365,136	$3,473,266	$3,491,365
Undivided profits for year	2,945,640	2,893,723	1,967,666	456,243	1,437,886
Accumulated surplus to date	5,068,225	7,961,947	9,929,613	10,385,855	11,823,740

*Indicates credits to profit and loss.

669

2007 2006 2005

Q. I think there is only one question or two more. In your former testimony, Mr. du Pont, you were asked a question which I want to read to you for the purpose of clearing up what seems to be some uncertainty in regard to it. You will find this on page 286 of the record: "The shares of the Powder Company were distributed to the owners"—is your answer to the question—"The shares of the Powder Company were distributed to the owners of the property for which those shares were paid. The E.
2009 I. du Pont de Nemours & Company received its share of the stock in payment for its assets, and remained possessed of that stock until the dissolution took place, the dissolution of the E. I. du Pont de Nemours & Company, and that which went to the E. I. du Pont de Nemours Powder Company was distributed among the stockholders of the E. I. du Pont de Nemours Powder Company." What dissolution did you refer to there? A. The dissolution of E. I. du Pont de Nemours & Company. That corporation has been dissolved and their charter
2010 surrendered.

Q. When did that dissolution take place? A. I think it was the early part of this year.

Q. Nineteen hundred and—— A. 1913 or the latter part of 1912.

Q. How did that dissolution occur? (Objected to and objection sustained.)

Q. Do you know who Mr. Maddox is or was during 1903 to 1908? A. He is employed by E. I. du Pont de Nemours & Company.

Q. Where was he located? A. In Wilmington.

Q. What were his particular duties? A. He was in the black powder operating department.

Q. Did he have anything to do with the operation of various plants throughout the country? A. The black powder plants, yes.

Q. I show you an exhibit here (handing to witness) and ask you whether you know anything about this, Mr. du Pont, Plaintiff's Identification 1151? A. No; I have no recollection.

Mr. Abbott: That is all, Mr. du Pont.

Cross examination by Mr. Button:

Q. Mr. du Pont, will you look at the first companies on Plaintiff's Exhibit 1095, being a list of 2012
plants owned directly or through stock ownership by the E. I. du Pont de Nemours & Company, on March 1, 1902, and state whether or not all except two were entirely owned? I believe you stated that you owned only a part of some of those plants? A. Fairchance and Newhall plants we owned or controlled, through the Hazard Powder Company; a majority of the stock of the Meadowbrook. We owned directly 60 per cent of the stock.

Q. In the other instances did you own all? A. The Tamaqua plant we had 60 per cent. The others 2013
we owned either all of the stock, or owned the property directly.

Q. Are there any dynamite plants in that first list? A. No.

Q. Now, in regard to the next part of this same page, plants owned by Laflin & Rand—first, are there any dynamite plants in that list? A. No; there are not.

Q. And can you state whether the Laflin & Rand owned all of those plants, or only an interest in some of them, and if so, in which one? A. I think they owned them all directly, except the Moosic, the Rushdale, and the Schaghticoke, of which they owned the majority of the stock.

Q Now, on the next exhibit which is Plaintiff's Exhibit 1096, being plants owned or controlled

jointly by the du Pont and Laflin & Rand Powder Companies, concerning which I believe you testified that those two companies together owned and controlled the stock, could you point which are black powder plants and which are dynamite plants? A. The black powder, Belleville, Birmingham, Chattanooga, Consumers, Dorner, Enterprise, Farmingdale, Fontanet, Kellogg, Oliver, Riker, Shenandoah, Youngstown; those are the black powder.

2015 Q. Are the balance dynamite plants? A. The balance are either dynamite plants or manufacturing nitro glycerine, which we classify as a dynamite plant.

Q. Now, on page 3 of this same exhibit, "plants acquired by E. I. du Pont de Nemours & Company" or by the powder company by purchase after March 1, 1902, can you state which are black powder plants, if any? A. Conemaugh, Santa Cruz. Those are the only black powder plants.

2016 Q. Now, in the last list on the same exhibit, being a list of the plants constructed by either E. I. du Pont de Nemours Company, or by the Powder Company, after March 1, 1902, will you state which were black powder plants? A. The Connable Nemours, Patterson.

Q. And the rest are dynamite or nitro-glycerine plants? A. Yes.

Q. How much did this Casey plant at Casey, Ill., amount to? A. That was a very small plant, for the manufacture of nitro glycerine.

Q. And the Hartford City, at Hartford City, Ind.? A. That is also a small plant.

Q. And the Joplin plant at Joplin, Mo.? A. That is a fair sized dynamite plant.

Q. And the Sterling at Lewisburg, Ala.? A. That is rather a small dynamite manufacture.

Q. Now, these nitro-glycerine plants are plants

that manufacture straight nitro-glycerine used largely for the purpose of shooting oil wells? A. That is right, yes.

Q. And their business is extremely local, on account of the impossibility of transporting it? A. Must be within wagon haul; cannot transport it in any other way.

Q. In regard to the plants that were constructed by your companies from time to time in some instances, do they take the places of plants which have been subject to explosion, or which had worn 2018 out? A. Not directly, no.

Q. Now, when you were on the stand before, Mr. du Pont, referring to page 359 of the record, the record indicates that you stated as follows, in reference to the original entry of the du Pont Company into the dynamite business, the question was "And the entry of the du Pont Company into that business was in the nature of an original cash investment in several different companies at the time those companies were formed, was it not? A. They actually formed the Repauno Chemical Com- 2019 pany. They did not buy into it. They organized it themselves, and the Smokeless Powder Company I understood had purchased stock and also the Eastern Dynamite Company." Now, is that statement just correct, Mr. du Pont? A. No; it is not accurate. Do you mind reading the latter part; it is correct so far as the Repauno Company is concerned.

Q. (Reading): "Q. They organized it themselves, and the Smokeless Powder Company I understood had purchased stock and also the Eastern Dynamite Company." But not Smokeless Company, they had nothing to do with the dynamite? A. The Hercules Company, I believe.

Q. Then they organized the Hercules Company

in the same way as the Rapauno, is that correct? A. Yes, sir.

Q. Then in reference to the Eastern Dynamite Company, that was not organized until some 13 or 15 years later, or thereabouts? A. 13 years later.

Q. In 1895? A. 1895.

Q. And on the next page, 360 of the record, near the bottom of the page there is this statement: "I would like to state in regard to the Eastern Dynamite Company when that was formed there were
2021 minority stockholders in that corporation; that the entire capital stock was not in the Laflin & Rand Company. Q. But they controlled it, did they not." Your answer is "Yes." Is that right? A. It should have been "No."

Q. Now, which two companies did control the Eastern Dynamite at that time—or which companies, I do not know if there were two? A. No company or individual controlled. The Hazard Powder Company and the du Pont, and the Laflin & Rand together controlled, but neither one con-
2022 trolled alone.

Q. Each being a minority stockholder? A. Each was a minority stockholder, yes, sir.

Q. And do you recollect whether the joint interests of the du Pont Company and the Hazard Company were less than a majority at that time? A. They were less than a majority.

Mr. Button: That is all.

Arthur J. Moxham—Recalled—Direct 2023

ARTHUR J. MOXHAM was recalled, and further testified:

By Mr. Abbott:

Q. Mr. Moxham, you testified before, I believe? A. Yes.

Q. I want to ask you just a few questions. Do you know Mr. R. S. Waddell? A. Yes, sir.

Q. How long have you known him? A. Since 1902, the fall of 1902. 2024

Q. Do you know what he was doing, what his occupation was at that time? A. He was a leading officer in connection with the sales of the du Pont Companies.

Q. Do you know anything about the time when he decided to stop his relations with the interests which you have just indicated? A. I do.

Q. Did you yourself have any conferences with him regarding that matter? A. Yes.

Q. Will you state what they were? A. Had so many it is a little difficult to give you the beginning. 2025 I think his first discussions were with the president, Mr. Coleman du Pont, and I was called upon by him to advise in the matter. I was aware that he had thought of leaving for some time before this occurrence that I now mention in a general way, but at this time he had determined to take the step, and had elaborated some plans to that end. We thought—we valued Mr. Waddell's ability as a salesman—that he had better remain with us, if it were possible for us to do so, and Mr. du Pont made him some offers to that end. I think, if my memory is right, he offered to subscribe. First of all, I think he tried to persuade him not to go into business by himself—to remain with the company.

Q. What, if anything, did you say to Mr. Wad-

dell with regard to that phase of the matter? A. About staying with the company?

Q. Yes. A. I don't today remember. I don't know that I had much to do with that. I think that when I came into it, matters had gone along a bit.

Q. Very well then. What was the rest of your conversation—conference? A. As I remember, at the beginning Mr. Waddell apparently entertained
2027 the thoughts of getting the balance of the money he needed from us. I believe that we made it a condition that we should have a controlling interest at the beginning.

Q. As to that, you say you believe that? Do you know that to be a fact? A. Yes, I know that was a fact. Am I to go on?

Q. I would like to have you confine yourself as near as you can to any conferences that you had with Mr. Waddell, rather than matters that occurred with some others? A. It is a little hard for me to repeat exactly what was said. I do not re-
2028 member it now. I can hardly do more than give you a broad digest of it all. I do not think I can even give you a date.

Q. Did you or did you not succeed in making any arrangement with Mr. Waddell, which was satisfactory? A. We failed to make an arrangement with him.

Q. After that condition of things, what did Mr. Waddell do, if you know. Did he leave your employ? A. Left us, yes.

Q. Now, when he came to leave your employ, do you know anything about any detectives that were put on his track? A. Nothing beyond the fact that one day I found a communication, in the shape of some letters from detectives on my desk. Who they came from, I don't know, and my only interest in

the matter was to stop the detectives—discharge them.

Q. Who was in your—who was immediately under you at that time? By the way, let me ask what department were you at the head of? A. The development department.

Q. And who was your immediate assistant? A. William S. Dwinnell.

Q. Is Mr. Dwinnell living or dead? A. Dead.

Q. What, if any, steps did you take, as soon as you heard that these detectives had been employed? 2030
To discontinue that, what did you do? A. I knew they were of no earthly use for the purpose I had in view.

Q. Now, state what steps you took? A. I instructed Mr. Dwinnell to discharge them, that is all.

Q. Now, do you remember how long this was when you had this information regarding these detectives after Mr. Waddell had left your employ? A. Well, it must have been a very few weeks.

Q. Well, how many? A. I do not know. 2031

Mr. Abbott: That is all.

Cross examination by Mr. Button:

Q. In reference to this proposition which was made with Mr. Waddell, to go into business with him, you have stated that your recollection is that the du Pont Company insisted upon having control. Now, was not that arrangement about as follows—that Mr. Waddell was to have 51 per cent. of the stock of his proposed company, but that 2 per cent. of it was to be put up as collateral security by Mr. Waddell, to assure the carrying out by Mr. Waddell of certain undertakings he had made?

2032 *Arthur J. Moxham—Recalled—Cross.*

Mr. Abbott: Now, if your Honor please, we object to that. That is a statement of matters which have not in anyway been brought out in the direct examination, and furthermore——

The Court: I think it is within the scope of cross examination.

Mr. Abbott: Well, the writings which are already in evidence state fully the conditions which were made by these parties, or
2033 which were attempted to be made.

The Court: That would not make any difference. It is within the scope of cross-examination. You touched upon that condition. It is within the limits of a proper cross-examination.

To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

A. I can only answer that as a matter of hearsay. That part of the matter was, I think, in the
2034 negotiations between——

Mr. Abbott: Just a moment. The witness says he can only answer it as a matter of hearsay. I think that that is sufficient to make his answer inadmissable. We object to it upon that ground.

The Court: Of course, if it is heresay——

The Witness: It was hearsay from Mr. du Pont. I do not know legally.

Q. Your knowledge in that regard is of the same character as your knowledge in reference to the statement you did make? A. Yes.

Mr. Button: Then I think it should all go in.

The Court: It is already in evidence anyhow, from Mr. du Pont. I will allow it if it it is from Mr. du Pont. Is it?

The Witness: It is from Mr. du Pont.

The Court: Yes, I will allow it.

The Witness: May I finish?

The Court: Yes.

A. I want to say that I did not pay very much attention to those details, because the question of control or not control, I did not consider, and I 2036
do not think really Mr. du Pont did, as a matter of final decision. It was merely an effort on our part to negotiate for what we estimated to be the best for the company. I do not think that alone was a matter of very grave importance to the company.

Q. You were aware at that time that Mr. Waddell was possessed of a great deal of information in regard to the du Pont Company, gathered through twenty years, were you not? A. Oh, surely.

Q. That he knew all about your customers and 2037
prices and trade? A. Knew more than anybody. He had almost all of the knowledge that the company had about that, at that time.

The Witness: He had almost all of the knowledge that the company had about that, at that time.

Q. And to your knowledge he had been under a salary for twenty odd years, under circumstances in which his duty was to get in contact with the customers themselves, was not that the situation? A. I do not know how many years, because that antedated my coming, but I knew it had been for a long time, and that the facts you state are so.

2038 Q. That is all. Just one moment. About these reports from detectives that you saw, would you be able to identify them now, if you saw them? A. No.

By Mr. Abbott:

Q. Did you consider it anything improper on Mr. Waddell's part for him to go out and establish
2039 a business for himself, and take advantage of his ability and experience in the powder business? (Objection overruled.) A. No, we, all of us, thought he had a perfect right to do that if he wished to.

By Mr. Button:

Q. Did you think he had a perfect right to take a lot of private documents, belonging to the company, when he went away? A. We certainly did
2040 not.

By Mr. Abbott:

Q. All right. Do you know whether he did do it? A. I do not.

Mr. Abbott: That is all.

Deposition of WILLIAM J. THRUSH, a witness produced on behalf of the plaintiff, being duly sworn, read as follows:

Direct examination by Mr. Abbott:

Q. Mr. Thrush, you have given your full name to the commissioner? A. Yes, sir.

Q. Where do you reside? A. Hanna City.

Q. Illinois? A. Yes, sir.

Q. How long have you resided there? A. 25 years.

Q. What is your business? A. Coal mining.

Q. How long have you been a coal miner? A. 43 years.

Q. Whereabouts has your experience as a coal miner been had? A. Well, altogether in this state, in different places.

Q. Describe the places where you have worked as a coal miner? A. I have worked out in Danville, Ill., and I have worked at the Kingston Mines, Star Mines and in the Kickapoo Creek. 2042

Q. It is not necessary to tell all the places? A. No; all right.

Q. Did you ever work at the mines at Hanna City? A. Yes, sir.

Q. That is where you are engaged now? A. That is where I am at the present.

Q. Who is the owner of the mine where you are now employed? A. Applegate & Lewis.

Q. Were you employed there in 1907? A. Yes. 2043

Q. In your work as a miner—are you a member of the United Mine Workers' Association of the state? A. Yes, sir.

Q. How long have you been a member of that association? A. Ever since the organization.

Q. Now, what Local are you a member of? A. 661.

Q. Were you at any time ever a member of any Pit Committee or Mine Committee? A. Yes, sir.

Q. State when that was? A. That was in 1906, '07, '08 and '09.

Q. Continuously? A. Yes.

Q. Have you any relatives living at Hanna City? A. Yes, sir.

2044 Q. Have you any relatives living at Hanna City who are employed in the mines at Hanna City? A. Yes, sir.

Q. State about how many relatives you have who are engaged in a similar business to yours at Hanna City? A. Well, as near as I can tell, about 18.

Q. What are the total number of miners employed in the mine at Hanna City? A. All?

Q. Yes. A. I don't know the exact number, but something near 100 miners.

2045 Q. Have you handled black blasting powder in your operations as a miner? A. Yes, sir.

Q. What kind of black blasting powder have you handled? A. Different kinds. Buckeye powder, du Pont powder, what they call the Pacific powder, and the Laflin & Rand brand and the King's.

Q. State what experience you have had in handling the Buckeye powder. When and where did you use it? A. I used that out at the Hanna City mine.

Q. When did you use it? A. I used it in 1907

2046 and 1908.

Q. Do you have any knowledge of a test that was undertaken between the Buckeye powder and the du Pont powder at the Hanna City mines in 1907? A. Yes.

Q. What, if any relation, did you sustain to that test; did you participate in it in any way? A. Yes, sir.

Q. State what you did—just how you participated in that test? A. One of the judges.

Q. By whom were you selected? A. I was selected by our sub-district president, Samuel Edwards.

Q. And which side in the contest were you selected to represent? A. The du Pont side.

Q. After you were selected to act in that test,

what did you do, what was your first step? A. My first step was to beat the test, if I could.

Q. Did you yourself do any of the work in connection with the handling of the powder? A. I did all the handling of the powder.

Q. State what you did, just how you handled that powder, in order to demonstrate the qualities of your powder? A. Well, there were two men working under me, and I would show them where to drill the holes, and when they drilled the hole I would charge it and put the blast in, and use my 2048
own judgment with the powder, what I thought was all right to put the coal cut. I put the charge in, and I would take some out if they had too much powder in the cartridge, and maybe I would put in a little more.

Q. Were you on the mine committee at this time you speak of? A. Yes, sir.

Q. You were a member of that committee? A. Yes.

Q. What powers did the mine committee have with reference to the inauguration of a test of that 2049
character? A. The mine committee is supposed to have a little more power to settle the disputes and grievances that arise. They come to a mine committee if they have a dispute any say, "I want you to come and adjust this for us."

Q. You were acting both as a member of the mine committee and as a judge at this test? A. Yes, but the mine committee had nothing to do with that test whatever.

Q. They had nothing at all to do with it? A. No.

Q. Do you know who furnishes the du Pont powder that was furnishes to you at that time for use in that test? A. Yes.

Q. Who was it? A. It was an agent of the Dooleys.

Q. And where are the Dooleys located? A. In Peoria.

Q. Do you have any personal acquaintance with members of that firm? A. Yes, sir.

Q. Do you know both of the members? A. Yes.

Q. How long have you known them? A. About 30 years.

Q. Do you know any person who was acting for or representing the Dooley Brothers at that time?

2051 Mr. Katzenbach: That was objected to as irrelevant and immaterial. (Objection overruled.)

Q. (Continuing) Who was such a person? A. I was representing them for one.

Q. You say you were representing Dooley Brothers; in what capacity were you representing them? (Objected to as irrelevant and immaterial. Objection overruled.) A. As a sub-agent.

2052 Q. At what point? At Hanna City.

Q. What were your duties as sub-agent at Hanna City for the Dooleys? (Objection overruled.) A. It was to sell their powder as much as possible.

Q. By whom were you employed to represent the Dooley Brothers? (Objection overruled.) A. I was employed by Mr. Moffatt.

Q. What are his initials, if you know? A. Edward.

Q. Do you know where Mr. Moffatt resides at this time? A. No, sir; I don't know.

Q. Do you know where Mr. Moffatt resides at this time? A. No, sir, I don't. He give me his number, but I couldn't——

Q. I mean as to the place? A. In Peoria.

Q. Do you know whether he still represents Dooley Brothers or not? (Objection sustained.)

Q. State how it came about that you came to be employed by Mr. Moffatt to represent the Dooley Brothers at Hanna City? (Objection sustained.)

Objection was interposed by counsel for defendants to the further reading of the deposition, and request was made of the Court to examine the same; after argument, the Court examined the deposition, and sustained the objection that certain questions and answers of said deposition were incompetent, irrelevant and immaterial, and excluded the same and directed that the same be not read, to which ruling the plaintiff then and there excepted, which exception was allowed. 2054

That part of said deposition which was included within said ruling and exception, reads as follows:

"Q. State how it came about that you came to be employed by Mr. Moffatt to represent the Dooley Brothers at Hanna City. A. He wrote me a letter; he was personally acquainted with me, and he wrote me a letter and told me to come to town; and I accepted the letter and came down to see him. I met him here at the Smith Hotel. He said, 'Get in the buggy and we will go down home.' We went down on Western Avenue—that is where he lived at that time. He said, 'I got a proposition to make to you'; he said, 'If you will get this powder installed out there in place of the Buckeye powder, I will pay you a commission on it.' 2055

"Q. Now what did you say in response to his proposition? A. I told Mr. Moffatt, I said, 'All right, I will go out there and do the best I can for you.'

"Q. Was there any agreement made between you at that time as to what compensation you were to receive for your services? A. Yes, sir.

"Q. What was that? A. 5 cents a keg."

"Q. For how long was that agreement to continue? A. As long as they used—now, when we made that agreement, it was as long as they used that powder, but it didn't continue that long.

"Q. How long did it continue? A. I believe it continued about a year and a half or two years.

"Q. During this time, did you receive any compensation for your services, in pursuance of the arrangement which you have just testified you made
2057 with Mr. Moffatt? A. Yes.

"Q. State, as near as you can recall, how much compensation you did receive from that source. A. I wouldn't state positively how much, but something like $100.

"Q. From whom did you receive that money as it came due? A. From Mr. Moffatt.

"Q. Where was the money paid to you? A. At different places.

"Q. State the places, as near as you can recall. A. Generally at Dooley Brothers' office, where I
2058 could see him; he was most always there.

"Q. Was the money paid to you over the counter?

"A. No, sir.

"Q. From whose hand did you receive it? A. Mr. Moffatt's.

"Q. Describe the circumstances under which you received the money from Mr. Moffatt; where and just how it was paid to you? A. It was paid to me in different shapes, sometimes.

"Q. You have testified you received some money from him at the office of Dooley Brothers; describe the circumstances and the manner in which that was paid to you.

"A. I always went in the back room, and Moffatt would come in the front room in the office part, and he would come to me this way, walking over

to me and touching my arm, and he would drop the money in my hand, and I would put it in my pocket and get out.

"Q. Describe any other locations or places where you received money from him. You stated you received it from him from different places. A. At one time I come in there, and he said, 'I want to see you;' 'All right; come down and have a drink;' I told him I wasn't drinking, and he said 'come down and have a cigar;' and we went down to that middle saloon right around the corner from his building. 2060

"Q. Around the corner from the Dooley Brothers? A. Yes; and when we got there, we sat at a table, and he gave me the money over the table.

"Q. Now, did you state how long this arrangement with Mr. Moffatt and Dooley Brothers continued? A. Dooley Brothers had nothing to do with it.

"Q. You made your arrangement with Mr. Moffatt? A. Yes, sir.

"Q. How long did this arrangement continue? 2061
You have answered that question already, but I want to refresh my mind. A. It continued very near two years.

"Q. It began in 1907—what part of the year?

"A. I couldn't just recall it."

Thereupon the reading of the deposition was continued as follows:

Q. What powder is being used at the Hanna City mines at the present time? A. Western powder.

Q. Western powder—where is that manufactured? A. It is manufactured over at Edwards Station, Illinois.

Q. The powder plant known as the Western Powder Manufacturing Company's plant? A. Yes, sir.

2062 Q. When did they begin using Western powder at the Hanna City Mines? (Objection overruled.) A. They were using just as quick as Mr. Waddell, I believe, went out of business.

Q. Was there any complaint made at any time after you began using Western powder, by the miners, on account of Western powder? (Objection overruled.) A. None whatever.

Q. Were you familiar with the kind of powder used in the mines at the time Mr. Waddell sold his
2063 property you speak of? A. Yes, sir.

Q. What powder was being used just before he sold out? A. Du Pont powder.

Q. And what powder was used shortly after he sold out? A. Just as quick as we got rid of the du Pont powder, they used Western.

Q. And have they used du Pont powder since that? (Objection overruled.) A. Not to my knowledge.

Q. And have you been working in the mines continuously since that time? (Objection overruled.)
2064 A. That is right.

Q. Did you ever hear any more complaints regarding the quality of the Western powder after Mr. Waddell disposed of his property? (Objection overruled.) A. No, sir.

Q. Have you ever heard any complaints regarding the quality of that powder from that time down to the present day? (Objection overruled.) A. No, sir.

Q. After the Western Powder Company became installed in the mines, did you continue to receive any further payments from Mr. Moffatt?

Mr. Katzenbach: That is objected to as leading and irrelevant and immaterial. Also, the next several questions.

The Court (after examination of the de-

position): The questions down to page 1524 are excluded.

To which ruling of the Court the plaintiff excepted and such exception was allowed.

That portion of the deposition included within said ruling reads as follows:

"Q. After the Western powder became installed in the mines, did you continue to receive 2066
any further payments from Mr. Moffatt? A. No, sir.

"Q. I wish you would state in a general way, in your own way, just how you went about performing your duties under your arrangement with Mr. Moffatt, for the purpose of keeping Buckeye powder out of the mine and securing the use of du Pont powder. A. The grounds that I worked on was the commission I was getting out of it, and I used my influence the best I could to get that powder in.

2067

"Q. Tell some of the things you did; some of the ways you used your influence. A. I was an expert miner in that coal, and worked in it so long, and I used to get out considerable coal, as much as any of them, and more than most of them there; and I said, "Why don't you use the same kind of powder, why don't you use some good powder"; I said, "Look at my bulletins; I don't use as much powder as you do, and I am getting out more coal" They said, "What are you going to do: They send in this keg to me?" and I said, "Exchange it; they will take it back.

"Q. State whether or not, in your experience as a miner, and also as a member of the Miners' Union and a member of the Miners' Committees, how the members of the Pit Committee are regarded by the miners as a body.

2068 A. They are regarded as a refuge, for to go to them for to get advice and to get difficulties adjusted.

"Q. State whether or not, as a rule, and in your experience, the men who are selected upon the Pit Committee are men with experience and who have the confidence and respect of their associates? A. They are picked as men with ability to know."

2069 Thereupon the reading of the deposition continued as follows:

Q. You stated that you knew the Dooley Brothers; where did you know them? A. When I first got acquainted with them was down at Bartonville.

Q. And how did you come to get acquainted with them? A. Working in the same mines.

Q. And they were practical miners? A. Yes, sir.

Q. And you worked together? A. We worked in the same mine.

2070 Q. Did you ever know a man by the name of William Kingbush? A. Yes, sir.

Q. Where did he reside? A. Edwards Station.

Q. What was his business? A. A coal miner.

Q. He was a coal miner, too? A. Yes.

Q. In what mine was he employed, if you know? A. Edwards Station; I don't know which one of the mines he worked in.

Q. Do you know what position, if any, he occupied in the mine as to the Miners' Union? A. No, sir.

Q. Or as to the miners who were engaged in the mine? A. No, sir; I don't know.

The reading of the cross-examination was waived by the defendant's counsel, and the same was read by plaintiff's counsel, as follows: (Objection overruled.)

Cross examination by Mr. Katzenbach:

Q. Mr. Thrush, in what mine were you working in the year 1903? A. 1903, Hanna City.

Q. And who was the owner of the mine? A. I believe I had a part interest in it at that time; I am not sure.

Q. You don't remember, then, anything about that in 1903? A. Yes, I recollect it; I can't place it.

Q. You can't place it? A. No, sir. 2072

Q. What mine were you working in in the year 1904, Mr. Thrush? A. Hanna City.

Q. You were living in Hanna City? A. Yes, sir; I was living in Hanna City.

Q. But what mine were you working in? A. At the Star Mine.

Q. Do you know the mine you were working in in 1905? A. I wasn't working in no mine at that time.

Q. You were not in a mine during that year? A. No, sir.

Q. What were you doing in 1905? A. I was just staying at home. 2073

Q. During the year 1906, where did you work? A. I worked at Farmington.

Q. In whose mine did you work there? A. For the Maplewood Coal Company.

Q. And you were also there during 1907, with the Maplewood Coal Company? A. Part of that time.

Q. When did you leave the Maplewood Coal Company? A. I couldn't just tell the date I left.

Q. Do you remember what month it was? A. I left there and then went to work for Newsam.

Q. For Mr. Newsam? A. Yes, sir.

Q. That is, in the year 1907? A. No, sir; not in 1907.

Q. But after you worked with the Maplewood Coal Company, did you go to work with Newsam? A. I worked there a month afterwards.

Q. And what date did you leave Newsam? A. I couldn't tell you; I didn't keep track of the dates.

Q. And then, after you left Newsam, where did you go? A. I went back home.

Q. Then, you didn't work for some time? A. I believe it was about five or six months I didn't do anything.

2075 Q. That you didn't work? A. Yes.

Q. And that was after you went back to your home; after five or six months, you didn't work? A. Yes, sir.

Q. Now, then, what mine were you working at during the year 1908, if you worked? A. I worked in the Hanna City Mine.

Q. And what time of the year 1908 did you go to work at the Hanna City mines? A. What time of the year?

Q. Yes? A. I am not positive; I believe it was

2076 in September or August.

Q. August or September, 1908, you went to work in the Hanna City mine? A. Yes, sir.

Q. Who owned the Hanna City mine? A. Applegate & Lewis.

Q. And when you went to work in that mine in September, 1908, what powder was being used there? A. Both kinds, Buckeye Powder and du Pont Powder.

Q. And what powder did you use and request yourself, in your mining operations? A. Used both kinds.

Q. Was there anybody that was working in the mines for the Buckeye Powder Company? A. I never investigated.

Q. You say you never investigated that; you

never even heard that anybody worked there for the Buckeye Powder Company in the handling of the Buckeye powder? A. Well, I heard rumors that people did work for them, but I never investigated to see what it was.

Q. You couldn't even tell from being about the mines, who it was that was working for the Buckeye Powder Company? A. No, sir; I had my own business to attend to.

Q. You didn't even know anything about that? A. No, sir. 2078

Q. Now, then, you had been working in the mines of Applegate and Lewis how long when you received this letter which you say you received, five or six months? A. I should judge about a year.

Q. So that you then received this letter about in the month of August or September, 1909, didn't you? A. Yes, sir.

Q. That was about a year after you went to work there, and that is the best of your recollection, after you went to work there? A. That was 1908—no, 1907.

Q. Well, now, what time in the year 1908 did you receive the letter? You say it was in 1907? A. I couldn't state exactly what month it was in. 2079

Q. After receiving this letter, you came down to Peoria, did you? A. Yes, sir.

Q. And where did you go? A. I went to Mr. Moffatt's house.

Q. Who opened the door for you at Mr. Moffatt's house? A. Mr. Moffatt himself.

Q. Mr. Moffatt has a family, hasn't he? A. Yes, sir.

Q. What members of Mr. Moffatt's family did you see on that occasion? A. I seen his wife.

Q. Who else? A. I believe that's all.

Q. So that then, you saw Mr. Moffatt's wife, Mr.

Moffatt and Mrs. Moffatt on that occasion? A. Yes, sir.

Q. You say you frequently went into the office of Dooley Brothers after this. You have known the Dooley Brothers for some time, haven't you? A. Yes, sir.

Q. And you had known them for some time? A. Yes.

Q. What were the names of the Dooley Brothers? A. The oldest one is named Jim.

2081 Q. What was the younger named? A. The second one is named Dick.

Q. And then you went in there, you used to see them, didn't you? A. Not very often.

Q. You did on several occasions see them in there? A. Yes, sir.

Q. And talked with them? A. I never met a friend in my life but what I speak a word or two with him.

Q. Yes; but when you went into the Dooley's place on these occasions you referred to, you chatted with the Dooleys, didn't you? A. No, sir.

2082 Q. What did you say to them? A. Nodded my head.

Q. And they would be in the store; they were in the store? A. In the office part.

Q. And how many times did you go in there? A. Well, I couldn't state how many times. If you would tell me how many times I come to town, I might tell you.

Q. You went in there every time you came to town? A. Pretty near.

Q. Will you say it was a half a dozen or a dozen times? A. I could say it was a dozen times.

Q. And you always went there, without exception, didn't you, to the store, every time you came in town? A. I used to go in and buy supplies for a coal mine.

Q. And now you say that money was paid you in the store of Dooley Brothers, or did you have a sir. I didn't have a charge account. I always paid charge account there for your supplies? A. No, cash when I got anything.

Q. Now, this conversation that you said you had with Mr. Moffatt, the first conversation—just tell me everything that you told him? A. I don't know that I could tell you everything I told him.

Q. To the best of your recollection? A. I don't believe I can recall what you have asked me. 2084

Q. Tell everything you said. A. At what time?

Q. At this time you had this first talk with Mr. Moffatt. A. He said, "I got a proposition for you," and he said, "There will be something in it for you"; and I said, "All right, if there's anything in it, I am one of them fellows that wants to grab onto it." He said, "I will give you a commission on this of 5 cents a keg on all powder that is delivered out there at that shaft"; and I said, "All right, I will do the best I can; if I can get it installed, I will do it; it's something for me and something for you"; that was about the length of the conversation over that. 2085

Q. Now, then, I suppose that at these times you went into Dooley Brothers, there was a statement rendered you of the number of kegs that had been sold? A. No, sir.

Q. There was not? A. No, sir.

Q. Or did you keep that account? A. No, sir; we kept a running account; he was honest, so was I.

Q. Did you keep that in a book? A. No, sir.

Q. The Dooley Brothers had it on their books, didn't they? A. I couldn't say.

Q. In this conversation that you had at the house, will you state whether or not you have told all of it? A. All that I can recollect.

Q. Do you consider that your memory is pretty good or not? A. Yes, first rate.

2086 Q. And you never make mistakes on anything? A. The best of us make mistakes.

Q. But you have a very good memory, haven't you? A. Yes, sir.

Q. You spoke about having 18 relatives out at Hanna City; were any of those relatives working in the mine at the same time with you? A. Yes, sir.

Q. Which ones? A. The two boys that are working in there; a brother and four nephews.

2087 Q. What was your brother's name? A. Aleck, and two cousins.

Q. What was your brother's name? A. Aleck, Alexander.

Q. Was he advocating any powder at that time? A. He always used the Buckeye powder.

Q. He never had any talk with you about it? A. No, sir.

Re-direct examination by Mr. Abbott:

Q. What agents of Buckeye powder did you ever see around the mines around Hanna City mines, if 2088 you ever saw any agents? A. I never saw any.

Q. Do you know of any person who was acting for the Buckeye Powder Company at the Hanna City Mines during the time you were there? A. No, sir; not directly.

Q. Do you know of any one that was acting indirectly? A. Well, I have heard talk.

Q. Well, tell who it was that you had heard some talk about? A. I heard people say that Bob Morton and my brother Aleck and others was doing it.

Q. Do you know anything about the facts in that matter? A. No, sir; I never investigated a thing.

Q. Did you ever have any conversation with your brother Aleck concerning the use of Buckeye powder in the mine? A. All the conversation I ever had with him, he was always telling me that was the best powder.

Q. State what the conversations, or what experience you had with Robert Morton at any time concerning the use of Buckeye powder? A. Well, we have had quite a few harsh words together.

Q. You may relate such circumstances and such conversations as you had with him. A. I had a boy working in the mine; of course, they wanted to install that Buckeye powder in there, and he said to me, he said, "Say, you got to use that Buckeye powder to drive that entry with"; and my boy said, "I don't know that I've got to do that." He said, "If 2090
you don't, somebody else will take your place."

Q. What was the result of that conversation, if you know? A. The result was, somebody took his place; he quit.

Q. Can you recall any other conversation you had with Mr. Morton about the use of the Buckeye powder? A. None, except the one over that test they had in there.

Q. What position did Mr. Morton occupy at the mine at this time? A. Mine boss.

Q. He was representing the operators of the 2091
mine, was he? A. Yes, sir.

Q. The operators wanted one kind of powder and you wanted another kind? (Objection overruled.)

Q. Counsel for the defendants asked you whether or not you had an account with Dooley Brothers. Do you know anything about the manner in which they have kept their books with reference to these payments made to you? A. No, sir.

Q. Do you remember or do you know, whether or not any entries have been made on their books concerning those payments? A. No, sir.

Q. If there are any such entries there, they have been made without your knowledge? (Objection overruled.)

Q. Now, you said that you worked for awhile for a man by the name of Newsam? A. Yes, sir.

Q. Where were his mines? A. Farmington.

Q. Were they the mines known as the Newsam Brothers' mines? A. Yes, sir.

Q. Do you know what kind of powder he used there? A. Yes.

Q. What kind was it? A. Du Pont.

2093 The deposition of DOUGAL HUNTER, a witness produced on behalf of the plaintiff, being duly sworn, was read, as follows:

Direct examination by Mr. Abbott:

Q. Mr. Hunter, where do you live? A. Hanna City.

Q. What is your occupation? A. Coal miner.

Q. How long have you been a coal miner? A. Twelve years.

Q. Where have you worked as a coal miner? A. Why, I have worked at Hanna City, Ellisville, Wan-

2094 lock, Foster, Iowa.

Q. In what mines at Hanna City did you work? A. For Applegate and Lewis.

Q. Have you handled black blasting powder in your work as a miner? A. Yes, sir.

Q. What kinds? A. The du Pont and the Western.

Q. Any others? A. No, sir.

Q. In your work at Hanna City Mines, what special work did you do, if any, what were your duties, in other words, at the Hanna City Mines? A. At Hanna City, when I first started, I started driving mules.

Q. What were the duties of a person engaged as you were at that time? A. My duties?

Q. What do you mean by driving mules? A. To haul the coal from the face.

Q. Do you haul anything else but coal? A. Not necessarily; that is, a fellow isn't hired to haul anything else but coal.

Q. Did you ever haul anything else, then? A. Why, on different occasions, if there was anything else on a car that wants to go outside, I would haul it out, or anything coming in, I would haul it in.

Q. Can you recall hauling in anything or hauling out anything besides coal? A. Yes.

Q. What was it? A. Generally it is props.

Q. What are props? A. They are posts used to 2096
protect themselves in the mine.

Q. Do you know Mr. W. J. Thrush? A. Yes, sir.

Q. Who lives in Hanna City? A. Yes.

Q. How long have you known him? A. I don't know exactly.

Q. About how long? A. I have known him for about eight years.

Q. What relation, if any, do you sustain to him? A. He is my father-in-law.

Q. And how long have you been his son-in-law? A. Six years.

Q. During the period that you have been his 2097
son-in-law, have you ever been with him on any visit to the City of Peoria? A. Yes, several of them.

Q. State when and under what circumstances you have visited him on such visits? A. Why, I accompanied him down here, and chased into Peoria several times, not coming down here on any business with Mr. Thrush. I just come down for a "time" mostly.

Q. When was it that you came down with him for the purpose indicated? A. I couldn't give the exact dates of any time I have been in with Mr. Thrush.

Q. When you came to town with him, where did

2098 you go? A. Why, we generally showed up pretty near all over time when we came in, just chased around.

Q. Where did you first go? A. We most always stayed longest, probably, at Patty Elgin's.

Q. Then where did you go next? A. We just chased around town and took in the sights, mostly.

Q. Have you ever had any financial transactions with Mr. Thrush? A. Yes, sir, I have.

Q. State the nature of the transactions that you
2099 have had with Mr. Thrush? A. I have been with Mr. Thrush in town here and I have gone broke several times, and borrowed money off him.

Q. Were you ever with Mr. Thrush when he received money from anybody? A. Yes; I have not been with him when he received money from anybody there.

Q. State the circumstances that you had in mind when you said "Yes"? (Objection sustained.)

Q. You did not see the money pass; that is what you mean? A. Yes.

2100 Q. Describe what you did mean by the answer which you gave to the former question when you said "Yes"? (Objection sustained.)

Q. Where is Dooley Brothers' office located? A. It is, I believe—it is the 500 block on Adams street.

Q. Peoria? A. Yes, sir.

Q. Did you see Mr. Thrush go to Dooley Brothers yourself? (Objection overruled.)

Q. Did you see Mr. Thrush go to Dooley Brothers yourself? A. Yes, sir.

Q. And did you see him come from Dooley Brothers? A. Yes, sir.

Q. Do you know how many relatives Mr. Thrush had at Hanna City? A. I am pretty well acquainted with them, all right, but it will take a good while to figure it up.

Q. Have you ever made a list of the number of his relatives in Hanna City, which question I put to you by consent of counsel? A. Well, I am pretty sure there is fifty per cent of the population of Hanna City related to the Thrush family. 2101

Q. What is the population of Hanna City? A. Between three and four hundred.

Q. Mr. Hunter, do you know how the powder which is distributed to the miners is gotten into the mine? A. Yes, sir.

Q. Describe how, will you? A. During that time—the way it is delivered now, it is delivered at night and powder is sent down about seven o'clock in the evening while the power is off, the electric power; it is delivered all at night now, hauled in by the mules. 2102

Q. Was that the way it was hauled in at that time? A. Not at the time I drove the mules, no; they delivered it in the daytime then.

Q. But how was it delivered in the daytime? A. In the same way. It was sent down with mules; the driver would take it to the place where it was ordered. 2103

Q. Was or was not that a part of your duty? A. Yes, sir.

Q. When you got the powder into your mines, what did you do with it? A. Take it to the place it was ordered; if a miner ordered a keg, it was my duty to deliver it to the place where it was ordered.

Q. If the powder was returned, how was it brought out? A. They put it on a loaded car; they set the keg on the load.

2104 *Edward L. Suffern—Direct*

EDWARD L. SUFFERN, called and sworn as a witness for plaintiff:

Direct examination by Mr. Abbott:

Q. Mr. Suffern, where do you live? A. In Plainfield, N. J.

Q. Where do you carry on business? A. In New York City.

Q. Any other place? A. Yes, in Pittsburgh, Cleveland, Chicago, Baltimore, Birmingham, London, Paris and Brussels.

2105 Q. What is your business? A. We are public accountants and engineers.

Q. How long have you been engaged in that business? A. Approximately 25 years.

Q. Under what name? A. Originally under my own name, solely. And for the last seven or eight years under the name of Suffern & Sons.

Q. Have you any affiliations, any connections in any way, in carrying on your business outside of the offices which you conduct yourself? A. You mean association with other accountants in busi-

2106 ness?

Q. Yes. A. Or socially?

Q. Well, I mean in the same business, in the same line? A. There are associations of accountants, societies of accountants, various societies with which I am identified.

Q. Have you any relationship with any of those societies? A. Yes. I am a member of the Society of Certified Public Accountants in New Jersey, and the Society of Certified Public Accountants in New York, and the National organization, the American Association of Public Accountants.

Q. Do you sustain any official relation to any of those associations? A. I am recently retired from the presidency of the National organization, American Association, and I am now President of the

New York State Society of Certified Public Accountants.

Q. In your experience, in your conduct of your business, in the business which you have indicated, has it ever been any part of your duties to make valuations of industrial plants? A. Yes. If I understand just what you mean. We make appraisals of various plants, railways, other public utilities, appraising the physical features, and also we have from almost the beginning, made up, made investigations for the purpose of determining the 2108
earning values, or the sale values of enterprises of all descriptions. Those two features I have found do not always do both of those at the same time.

Q. Can you state the general character of such industrial businesses as you have placed valuations upon, from the standpoint of their capacity, or otherwise, outside of railways and plants of a similar character? A. Well, yes, and electric lighting —did you exclude those?

Q. No. That is all right. A. And industrials of quite a variety, I think. Machine corporations, 2109
companies making different kinds of machines. Iron and steel companies, coal companies, breweries, distilleries, cotton goods, cotton compresses, quarries. There are some others, I think, a number of different kinds that I cannot just at the moment remember. And automobile accessories, car wheels, car works. I don't remember any more just now.

Q. Now, I submit to you the following question, which is quite lengthy, if you will give your attention to it: Assuming a manufacturing plant—

The Court: Do you want to ask him any questions as to his qualifications first?

Mr. Katzenbach: I don't know what the proposed question is.

The Court: He is going to start his hypothetical question, I suppose.

Mr. Abbott: A question as to the valuation of this plant.

The Court: Do you want to hear the question first? It may save time.

Mr. Abbott: It is a hypothetical question relating to the valuation of the plant, business and good will of the Buckeye Powder Company.

2111 Mr. McCarter: I object to the question. He may never have seen the plant.

The Court: I think he may be examined further.

By Mr. Katzenbach:

Q. Mr. Sufferin, did you ever see the plant of the Buckeye Powder Company? A. No, sir.

Q. In your investigations, have you personally ever made an estimate of the value of the powder plant? A. No, sir.

2112

The Court: Do you expect him to establish the value of the plant, good will, etc., of the Buckeye Powder Company?

Mr. Abbott: The question, if your Honor please, is founded on his knowledge and on the valuation of business enterprises of a similar character. He has testified——

The Court: Similar character?

Mr. Abbott: Well, business enterprises that have a revenue producing ability, and the hypothetical question covers all of the details that have so far been produced in the evidence here, for his consideration, and for an answer.

The Court: I will hear your question.

Q. Assuming a manufacturing plant, constructed for the purpose of manufacturing black blasting powder, located near Edwards Station, about fourteen miles distant from Peoria, Illinois, said plant being located on the Chicago, Burlington and Quincy Railroad, the City of Peoria being served by twelve railroad companies, and said plant having secured from the railroad companies, equal commodity rates with other manufacturers of black blasting powder, said plant being so located that shipments could be made to the Iowa, Missouri 2114
and Montana coal fields on an equal transportation basis with the Iowa mills and assuming that the said plant was located in the center of the district where such powder was being consumed in increasing quantities from year to year and in a district where there was a constant and increasing demand and assuming that said plant was constructed entirely new in the year 1903 and was kept in good repair and operation from the time of its construction up to September 19, 1908, and

Assuming that said plant was located on a tract 2115
of approximately 110 acres, which cost $5,450, and there had been expended in the construction of the buildings and machinery, including the cost of the real estate, $117,000, and

Assuming that there had been added betterments which brought up the cost of said plant, land and buildings to $129,000, and

Assuming that the machinery was of first class construction and properly installed and in good order and condition, and

Assuming that said mills had a capacity of from 250,000 to 300,000 kegs per annum of black blasting powder and that the Buckeye Powder Co., which operated said mills, had ample capacity, machinery and facilities to manufacture conservatively

2116 *Edward L. Suffern—Direct*

250,000 kegs of powder per year and that a fair and reasonable profit upon said powder, so manufactured, when sold, was the sum of thirty cents per keg.

What, in your opinion, would you consider the reasonable and fair value of such a plant, business and good will on September 19, 1908, operating under the conditions and in the manner above set forth?

2117 Mr. Katzenbach: Now, we object to that question being asked of this witness, on the ground, first, that he is not qualified as an expert to pass upon the value of this plant, and upon the further ground that this question assumes facts that are not in evidence.

The Court: What are they?

Mr. Katzenbach: Do you want me to point them out?

The Court: Yes.

2118 Mr. Katzenbach: Well, in the first place, that it assumes that there were equal freight rates with powder plants located elsewhere in the States of Iowa, of Missouri, and Montana, which I do not recall has been proven. In the second place, it also states that there was an increasing consumption of powder in the district. The question did not show in what district.

In the next place, that this property was in good repair.

In the next place, that it had a capacity of 250,000 to 300,000 kegs per annum. There might be some evidence as to that.

And also that it had ample capacity for caring for all of the increased demands in that locality.

And also it assumes as a fact that which has only been expressed as an opinion, if

anything, and that is that a fair and reasonable profit on powder is thirty cents a keg. That, to my mind, is a ridiculous proposition. And, therefore, upon those statements of fact, I do not believe that this question can be answered, because the witness has had no experience whatsoever, and has had no inspection of this property; and I do not suppose he knows where the Chicago, Burlington & Quincy Railroad begins or ends, or anything of that kind.

2120

The Court: What do you say?

Mr. Abbott: I think, if your Honor please, this witness has shown his competency to answer questions concerning the valuations of plants of this character. By that I mean an industrial business. It is not necessary that this witness should know all about how a powder plant is operated, any more than it is that he should know all about how a distillery plant should be operated. As an expert, he passes his opinion upon information, and this hypothetical question assumes

2121

that facts exist, just the same as if he had reports from his agents or clients, whatever they might be, as to certain conditions surrounding certain industrial plants. He takes that information, takes his experience over a long period of years with a large number of industries, and he gives his opinion as to what that plant is worth. As I stated, the other day, with reference to this question of loss of profit, it is merely getting the opinion here of an expert who has had experience in dealing financially and otherwise with large enterprises, industrial enterprises, as to what such a business ought to be worth in the open market under certain conditions,

2122 *Edward S. Suffern—Direct*

for the purpose of advising the Jury so that it may form its own estimate as to what the plant is worth. It is a much better, much safer way to arrive at a valuation of the plant than it is to take the statement of an interested party, who might have some reasons for putting a valuation high up, or who, on the other hand, might have some interest in putting a valuation low. This witness comes as a disinterested party with certain
2123 facts submitted to him, and upon those facts he forms his opinion.

So far as the statements of counsel are concerned, as to what the question covered, this question has been carefully drawn from the evidence which has been submitted to the Court, and we believe that every statement here is fully covered by such evidence.

The Court: Competency of the question depends upon whether it includes all of the facts alleged. But I am not prepared to ad-
2124 mit this kind of evidence on the valuation of a going concern, a manufacturing concern. It is not easy, of course, to fix the limit where expert testimony stops; but if expert testimony is to be received as to the value of the manufacturing concern at a certain time, it seems to me it is essential that it should be testified to by one who has other knowledge in support of his opinion than that merely contained in a hypothetical question. There are too many elements that go into the question of a manufacturing plant. Some manufacturing plants are never worth what it costs to build them. Others are worth a sum greatly in excess of what it would cost to reproduce them, a physical reproduction. Whether a going

concern is valuable or not depends on so many considerations that any one testifying to the value of such a plant ought to be familiar with the exact physical facts; he should be familiar with what the particular trade demands, the peculiar conditions that affect a certain trade. This witness, of course, has not, does not claim to possess. To my mind, it is incompetent for an expert to testify simply from his general knowledge, from being expert in the appraising 2126
and valuation of different properties. The question is, therefore, overruled.

Mr. Abbott: Will your Honor allow me to ask the witness a question or two more? With this idea in view, to show that he often passes an expert opinion?

The Court: No. I have to settle the question upon the pronouncement of my own. It is not what some other Court may have done. I may be wrong, but that is my ruling.

To which ruling of the Court the plaintiff's counsel then and there excepted and 2127
said exception was allowed.

R. S. WADDELL, called as a witness for Plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Abbott:

Q. Mr. Waddell, where do you reside at the present time? A. Peoria, Illinois.

2128 *R. S. Waddell—Direct*

Q. Where did you reside before you went to Peoria? A. For about nine months at Wilmington, Delaware.

Q. How long have you resided at Peoria? A. From March, 1903, up to date.

Q. Previous to your residence in Wilmington where did you reside? A. Cincinnati, Ohio.

Q. And how long did you reside in Cincinnati? A. I moved there about May, 1883.

2129 Q. What business were you engaged in while you were residing in Cincinnati? A. I was general agent for the central states for the Hazard Powder Company of New York, from 1882 up to 1902, and of the du Pont Company—E. I. du Pont de Nemours & Company—from 1890 to 1902.

Q. And were you general agent of the latter company while you resided in Cincinnati? A. I was for about ten years or twelve years.

Q. What was the general nature of the work which was assigned to you to do as the representative of the Hazard Powder Company? A. On entering the employ of the company I was made general traveling agent of the United States. My duties were to check up agencies and to establish new agencies, buy land, build magazines, and look after the outside interests of the Hazard Powder Company throughout the country.

2130

The witness thereupon gave evidence tending to show that as an employee of the Hazard Powder Company, and of E. I. du Pont de Nemours & Company, he had knowledge that said companies were members of the Gunpowder Trade Association, that Mr. W. S. Colvin, then treasurer of the Hazard Powder Company, and W. S. Weightman, its secretary, and R. S. Wheeler, its vice-president, placed in his hands certain correspondence rules and other information relating to the affairs of said associa-

tion, and that he made a study of the same to ascertain the relations of his employers to that association, and what his own duties were in that connection; that among other documents thus received by him was a certain price list of explosives designated as "Established Price List of the Gunpowder Trade, January 1, 1882" (Plaintiff's Exhibit 1115); the "Compendium of Rules" (Plaintiff's Exhibit 1129); the "Fundamental Agreement" (Plaintiff's Exhibit 1116), minutes of meetings of the members of said association and of certain committees thereof; that in the fall of 1902 he received a copy of an amended Compendium of Rules from Mr. T. C. du Pont, president of the E. I. du Pont de Nemours & Company, and also, about the same time, he received another copy of the same document from Mr. A. J. Moxham, president of the Hazard Powder Company. 1132

Q. Now, will you state how it happened to come about that you received this copy of the compendium of rules from Mr. T. C. du Pont? A. I was acting for Mr. du Pont in his official capacity as a member of this special committee and the compendium of rules was necessary for the direction of my work. 2133

Q. Had you at any time any conversation with Mr. du Pont previous to the receipt of this compendium of rules concerning your acting for him in that matter? A. Yes.

Q. Relate what that conversation was. A. Along in May, 1902, shortly after I had come from Cincinnati to Wilmington, Mr. du Pont stated to me that he had been elected a member of the Advisory Committee to succeed Eugene du Pont, deceased, and he had been—and he had been appointed a member of the Special Committee with Mr. Haskell, president of the Laflin & Rand Company, and he said

to me, "I don't know anything about the details of this powder business, and I don't want to learn; I can make more money promoting companies and carrying out the plans that we have than I could by attending to the legitimate work of manufacturing powder, and I want you to take up those duties for me and help me in the work with Mr. Haskell of the Special Committee." I did so, and I acted for Mr. du Pont, under his instructions, and wrote
2135 numerous letters on the subject and apportioned a great deal of trade on contracts, and special prices during the entire summer of 1902 and well into the fall. The secretary of the committee, Mr. Higgins, addressed the letters to me, and I replied to them. I dictated the letters for Mr. du Pont to his stenographer, Miss Smith, and she attached his signature with the rubber stamp.

Q. Now, after you discontinued your relations with the Hazard Powder Company in New York, what became of the office of the Hazard Powder Company that had been continued previously, if
2136 you know? A. The officers—the president of the company was succeeded by Mr. Moxham, I think about July, 1902, and soon after that he came into the office at Wilmington; he had the offices in New York closed and a part of the office force were tendered positions at Wilmington and others were released, and the books and effects of the Hazard Powder Company were removed over to Wilmington, Delaware.

Q. Now, when the books arrived in Wilmington, Delaware, where were they deposited; where was the business of the Hazard Powder Company continued?

tinued? A. The books were brought into the auditing department of the du Pont Company, in one section of the room—one room—under the care of

the bookkeepers of the Hazard Powder Company.

Q. Where were the offices of the Hazard Powder Company maintained, what building? A. They came over while the offices of the du Pont company were about four and a half miles from Wilmington, out in the country, and they were later removed into a building in the City of Wilmington and in connection with the other offices.

Q. Can you give the names of some of the employees who were transferred from the Hazard Powder Company to the offices of the Hazard Powder Company in Wilmington? 2138 A. Mr. A. L. Miller—Albert L. Miller, the general bookkeeper of the Hazard Company, came over. There was another young man. I don't recollect his name, and after some months Mr. Lentillhon.

Q. How do you spell that? A. Assistant secretary of the company, came over to Wilmington.

Q. How do you spell that, Mr. Waddell? A.

Q. Now, after the Hazard Powder Company's offices were removed to Wilmington was the business conducted separately and distinctly for the Hazard Powder Company? A. Yes, so long as I 2139 remained there.

Q. Under whose management and direction was that business conducted at that time? A. Mr. A. J. Moxham, president, and I was general sales agent of the company.

Q. You were general sales agent for the Hazard Powder Company and the du Pont Company? A. Yes.

Q. All matters relating to sales were referred to you? A. Yes, and when Mr. Moxham would write a letter bearing on the work of the sales department, extra copies of that letter were given to me for my information.

Q. Now, down to what period did that condition

obtain, so far as you know? A. Up to the day I left, February 2, 1903.

Q. During the time you were representing the Hazard Powder Company and the du Pont Company at Wilmington as general sales agent, did you have anything to do with the making of any contracts for the sale of powder to various consumers? A. Yes.

Q. Can you recall the names of the consumers with whom you made contracts, of your own inde-
2141 pendent recollection? A. That I personally executed, the contracts?

Q. Yes; I am only asking you now if you can do it; if you cannot, why—— A. I think I can name a few of them; there were a great many of them.

Q. Give the names of some of the persons with whom you can remember you made contracts. A. Well, Pocohantas Coal Field—Pocohantas Coal Company; Angle Colliery Company; Algoma Coal Company; Lick Branch Coal Company; there were
2142 several coal companies located at Ennis, West Virginia; I can't remember them; two or three located at Bramwell, West Virginia. There was a Thomas Coal Company, but I don't know that I have the name correct—the title of the company. There was all the coal companies of the—located in the Bramwell—Pocohantas Coal field—about thirty of them in number, made by the Hazard, du Pont & King companies, and I was present and saw all the contracts signed.

Q. Do you know where those contracts are at the present time? A. I took them back to Wilmington with me and sent copies—one duplicate—or triplicate—of all of them to Edward Green, Secretary.

Q. You say you took them back to Wilmington with you, where were you at the time when these

contracts were entered into? A. I was in the Pocohantas coal field where these coal companies were located, in West Virginia.

Q. That is all you can recall from your own independent recollection? A. Yes; I have not refreshed my recollection for years on the question. I know them all. This was the second time that I had—this was a renewal of contracts that I had formerly made with the same people.

Q. Where, if you know, were those contracts that were formerly made by you, which you renewed? 2144 A. One copy of them was on file in the Cincinnati office. That was under my control—both for the Hazard and du Pont companies. Another duplicate was in the office of the Hazard Company at Wilmington, the Wilmington office of the du Ponts at Wilmington, and the other copies triplicates were in the hands of Edward Green, General Secretary of the Association.

Q. When you made these contracts as you have testified to, some of the names of which you have given, did you have access to these other contracts which you were renewing, did you have the contracts themselves present or accessible? 2145 A. Yes, I had a list of them; I didn't have the papers; I knew all about them.

Mr. Abbott: Well, we will take that matter up when the question is raised.

The Court: I now allow you to put it in for the limited purpose which I have stated.

Mr. McCarter: We pray an exception.

The Court: You may take it.

Mr. Abbott: Will you mark them in evidence, make each one of them separate.

Mr. Katzenbach: Your Honor, they are not being marked as exhibits, they are for identification as I understand it.

2146 *R. S. Waddell—Direct*

Mr. Abbott: These are offered as exhibits and as I understand it here your Honor.

The Court: They are admitted as exhibits and there cannot be any argument about that.

(The same received in evidence and marked Plaintiff's Exhibits 1130 to 1137.)

Q. Now I show you Plaintiff's Exhibit 1142 and ask you to state whether or not you can refresh your recollection from that document concerning
2147 the contracts which you assisted in making and about which you have already testified (handing witness book). A. Yes; I remember making most of the contracts named in this list, all of them for the Hazard and du Pont Company.

Q. All of them in that list for the Hazard and du Pont Company? A. I will see in a moment, excepting manufacturers C. & C. Company, Kansas City, Missouri; Morris C. & C. Company, Huntsville, Missouri.

Mr. McCarter: May I interrupt you long
2148 enough to ascertain, Mr. Abbott, and find out what he is saying about these companies, the Morris Company and so forth, I did not hear you.

Mr. Abbott: Certainly. He is giving the names of the companies with whom he did not have anything to do.

Mr. McCarter: Did not?

Mr. Abbott: With making the contracts.

A. (Continuing) All of the other contracts in the name of the Hazard and du Pont Companies on the list I personally made and saw a great many of them made by the King Company at the same time.

Q. I wish that you would point out on this list those that you did not see that were made by the King Company? A. I now find that I saw all of them made by the King Company; and there is one, the last one named on the list of contracts, that I have not seen.

Q. Give the name. A. In the exceptions that I did not make and that is the Fairmont Coal Company, the last one on the list that I omitted from the other list I gave.

Q. How did it happen, Mr. Waddell, that you 2150
represented the du Pont Company and the Hazard Company, and happened to see the contracts that were made by the King Powder Company? What relation did you sustain to the King Powder Company that made it possible for you, to know of the execution of contracts made by that company? A. The first contracts made with these parties was made by myself and Mr. Joseph French representing the King Company and we travelled together and called personally on each one.

Q. When was it that you made those contracts? A. That was three years prior to this—to the 14th 2151
of July, 1902. Then I went to Cincinnati leaving Wilmington on the 5th of July, 1902, and was there joined by Mr. French in behalf of the King Company and we personally travelled the entire district calling on each one of the parties named in that list and were both present when the contracts were signed for the du Pont, Hazard and King Companies.

Q. Was there at that time any relation between the interests represented by the King Powder Company and the interests which you represented to your knowledge? A. All members of the association—associated powder companies.

Q. The King Powder Company then was a mem-

2152 *R. S. Waddell—Direct*

ber of the Gunpowder Trade Association at the same time that the Hazard and du Pont Companies which you were representing as a member, is that correct? A. Yes.

Q. Now, I note that all of these contracts or nearly all of them that you have identified here are dated 7/14/'02. How did it happen that all of those contracts were made on or about such a similar date in the same period? (Objection overruled.)

2153 A. The Pocohontas Coal field is very limited, about thirty miles in length on the Norfolk & Western Railroad. The coal companies operating in that field that are mentioned here in this list of contracts had an association known as the Pocohontas Coal Company with headquarters at Bramwell, West Virginia, and we met there the representatives of the coal company, and most of them were present in Bramwell and signed up with us on the contracts when we called there at this time, on the 14th of July, 1902.

2154 Q. How did it happen, that you came—that you did not take or that you did not secure all of the contracts with these parties instead of some of them going to the King Powder Company? A. That was a division of trade agreed upon between the King Company, Hazard and du Pont Company and the Laflin and Rand which divided the entire trade of the coal field, about forty coal companies—divided under the rules of the association.

Q. Who was that division made by, this division of trade?

Mr. Katzenbach: If he knows.

Mr. Abbott: I assume that the question goes to that every time.

A. The rule of the association fixed and determined what company should have the contracts—

any contract. We would apply to the Powder Company, the principal that we represented—with a statement of the number of kegs that we had supplied a given customer during the previous two years, with the price that we had charged for it and made application for permission to contract with that customer. I applied at Cincinnati while agent there for the Hazard and du Pont Company for permission to contract with all of those companies in that list. The King Company did the same, and we conflicted. Under the rules, the King Company 2156
having secured part of the Hazard customers and a part of the du Pont customers would be entitled to an equity in their trade, so that we were mixed up with equities when we came to make the first contract, and by agreement between the Hazard—between myself representing the Hazard and du Pont Company, and Mr. O. E. Peters representing the King Company, we offset our equities in the trade of these coal companies. That is I would trade my equities in one of his customers with him for his equity in the trade of the others so that 2157
we separated the trade and made certain customers du Pont contracts and certain others Hazard contracts, and the others were King. And in the district we found one Laflin & Rand customer and they took over that contract.

Q. Now, I will ask you whether or not that system prevailed in your dealings with the Gunpowder Trade Association and its members previous to this date of July 14, 1902? A. Yes.

Q. As far back as what period? A. The time the system of contracting trade of the country was inaugurated, about the fall of 1897.

Q. Now, Mr. Waddell, have you related all of the conversation that you had with Mr. T. C. du Pont just previous to the time when you received

this compendium of rules regarding the duties which you were to assume for him in connection with the Gunpowder Trade Association? A. I think so. I was to represent him on the Special Committee.

Q. I will ask you if you know or ever heard of an agreement known as the foreign agreement? A. Yes.

Q. When did you first hear of that agreement? A. Shortly after it was made, in 1896—about the
2159 time it was made.

Q. When did you next hear of that agreement? A. Well, I had discussions in regard to it with officers and employees of the Hazard Company in New York along during 1896 and 1897, a matter of reference, I don't know how often I heard it.

Q. When did you next hear of the foreign agreement? A. I discussed the subject with Eugene du Pont.

Q. About what time was it when you discussed it with him? A. That was in the latter part of
2160 1896 or early part of 1897 when the negotiations were going on in Europe and in London. He was over there and I discussed his trip with him.

Q. After your discussion with Eugene du Pont, did you have any further discussion with any one in connection with the foreign agreement? A. I don't recall any up to the time that I discussed the subject with Mr. T. C. du Pont.

Q. Now, when was it that you discussed the subject with Mr. T. C. du Pont? A. I should think about June, 1902.

Q. What was said at that time by Mr. T. C. du Pont, to you regarding the foreign agreement? A. It was in the same conversation that I held with him with reference to representing Eugene du Pont on the Special Committee, and on the Ad-

visory Committee. He also stated that he had taken the place of Eugene du Pont as the American Chairman under the foreign agreement and that that agreement was so secret that he could not even discuss the subject—its contents with Pierre du Pont.

Q. Did he undertake to discuss its contents with you? A. No.

Q. Did he ask you in any manner to represent him in connection with that agreement? A. No.

Q. After you entered the employ of the Hazard 2162
Powder Company, did you ascertain or know whether other associations became members of that organization from time to time—or other companies? A. I did.

Q. How did you ascertain that information? A. In various ways.

Q. Well describe them—describe the ways? A. I know that the——

Q. In the first place do not say anything about what associations they were, but describe the ways first that you obtained this information. A. I 2163
know that there were certain companies that were not members of the Association, and that they were competitors of the associated companies, and that they afterwards became members of the Association.

Q. Describe the ways in which you obtained the information as to the acquisition of new members to this association. A. I was sent to Cincinnati, to open a branch office of the Hazard Powder Company and was given instructions by R. L. Wheeler——

Q. (Interrupting) Who was R. L. Wheeler? A. Then vice president of the Hazard Company. (Continuing)—that my chief work there was to conduct a contest against the King Powder Company and

the Ohio Powder Company, and to protect the Hazard's trade in that district.

Q. The King Powder Company at this time was not a member of the association? (Objection overruled.) A. No.

Q. Did it afterwards become a member of the Association? A. It did.

Q. Do you know when and how it became a member of the Association? A. After——

Q. Answer that, yes or no, please, and then go on.

2165 A. Yes.

Q. Now proceed to tell what you know about that matter. A. I know that succeeding a very strong contest in prices, when they became very low, that on or about July 1, 1886, the King Powder Company and the Ohio Powder Company went into the association.

Q. About 1886, you say? A. After July 1, 1886.

Q. Now, was there at that time any further steps taken by the association in the absorbing of these companies, did they change their form or make any additions to their rules? A. Some of the associated

2166 powder companies, du Pont, Hazard, and Laflin & Rand, purchased nearly a one-half interest in the Ohio Powder Company.

Q. And with reference to the King Powder Company? A. The King Powder Company went into the organization which was changed somewhat from the old G. T. A.

Q. By "G. T. A." what do you mean? A. "Gunpowder Trade Association." (Continuing) The trade of the country was then pooled as between the old associates and the new ones that went in with them.

Q. Describe how the trade of the country was pooled at that time? A. The associated powder companies, including the King, and Ohio, met at

Long Branch, New Jersey, and I was called there to confer with Mr. Wheeler and Mr. Colvin of the Hazard Company in relation to the volume of trade or quota in the pool that should properly be given to the King and the Ohio companies. I knew more of their trade than the officers knew. And I learned there from these officers of the company, that a pool was being formed, giving a percentage to each of the associates of the entire trade, and after it was formed I received the percentages which each received.

2168

Q. From whom did you receive those percentages? A. From a clerk in the office of the Hazard Powder Company.

Q. What, if any, distinctive name was given to this pool? A. That was called "The Association," it was the general name; I never knew the formal name. It was just called "The Powder Association."

Q. That was in 1896? A. 1886.

Q. 1886? After that time were any new members added to the association to your knowledge? A. Yes. In and about July 1, 1896, there were others taken in.

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Q. What companies became members of the association at that time? A. The Equitable Powder Manufacturing Company, the Phoenix Powder Company, the Southern Powder Company, the Chattanooga Powder Company, and the Globe was taken in at that time, giving the percentage.

Q. Under what circumstances, if you know, did those companies become members of the association, why and when? A. As I recall, the Phoenix built its mills in 1892; the Equitable in 1893; the Chattanooga in 1893, and they were in what we knew as disturbed districts; that is, districts where an outside competitor was selling his product and

the prices went down disastrously low, starting in 1892 and terminating at the purchase of the Phoenix Powder Company by the Associated Powder Companies in 1896, and finally culminated in the pool July 1, 1896, when all of the companies were taken in.

Q. Now, can you of your own recollection give a list of the companies that were in that pool of 1896? A. I think I can remember most of them.

Q. Will you kindly repeat them? A. The E. I.
2171 du Pont de Nemours & Company, the Hazard Powder Company, the Laflin & Rand Powder Company, the Oriental Powder Mills, the American Powder Mills, the Miami Powder Company, the Austin Powder Company, the Equitable Powder Company, the Phoenix Powder Company, the Chattanooga Powder Company, the Southern Powder Company, the Sycamore Powder Company, the Lake Superior Powder Company, the Marcellus Powder Company, the Globe Powder Company and I am not sure whether Schagticoke was one, but I am not sure
2172 whether at that time or a little later, it was included as a member of the Laflin & Rand. I think Schagticoke was entered as a separate company in that pool, making sixteen.

Q. At that time were there any other companies manufacturing powder in the United States that were not members of that association? A. Yes, there was the Rand Powder Company, having mills at Fairchance, Pennsylvania, near Pittsburgh. And it also had a small mill at Kingston, New York; there were some small companies in the anthracite region in Pennsylvania, the Shamokin and other small companies which never marketed any powder outside of the State of Pennsylvania, and most of their product was marketed by wagon; beyond that I do not know of any competition in the United States outside of the pool.

Q. You have stated that the Ohio River Company was acquired by part purchase. Do you remember how much of an interest was purchased by the associates at that time of the Ohio Powder Company? A. I don't know the exact amount, a little less than 50 per cent.

Q. Did the Equitable Powder Company come in after any interest had been acquired by the members of the association? A. No, du Pont and Laflin & Rand purchased 49 per cent at the time it came in. 2174

Q. How about the Phoenix Powder Company? A. The associated powder companies, du Pont, Hazard, Laflin & Rand, Miami, and Austin, purchased all of the Phoenix.

Q. Now the Chattanooga Powder Company, how about that? A. Du Pont and Laflin & Rand purchased 51 per cent of the Chattanooga.

Q. The Southern Powder Company, how about that? A. All of that was purchased by the du Ponts, Hazard and Laflin & Rand, and perhaps others, and the plant was demolished. 2175

The Court: Which one was that?

The Witness: The one at South Talapoosa, Georgia.

Q. Was it ever constructed again? A. No.

Q. How about the Phoenix Powder Plant, can you say whether that business was carried on? A. The Phoenix had three plants, three powder mills, one at Belleville, Illinois, and one at Kellogg, West Virginia, and one in New Jersey. Mr. F. W. Olin, President of the Equitable Powder Company, was elected president of the Phoenix and the business was carried on by the Phoenix Powder Company up to 1902, when it was absorbed after the purchase of

the Laflin & Rand and the du Ponts had control of it and it was taken over to Wilmington.

Q. After the purchase of the Laflin & Rand by whom? A. By the du Pont Company.

Q. Now, then, you have carried the organization of the association down to 1896. I will ask you to state whether there were any additional corporations or companies taken into that association after 1896, down to 1903? A. Yes.

Q. What companies were they? A. The Bir-
2177 mingham Powder Company, Birmingham, Alabama, started about 1897, and that was purchased by the du Pont, Hazard, Laflin & Rand, Austin, Miami, Equitable and other associates, and it was taken over into the association and given a quota. The Indiana Powder Company, Fontanette, Indiana, was purchased by du Pont, Hazard, Laflin & Rand, Austin, Equitable, Miami King and possibly the other companies—others of the associates in the pool about January 1, 1902, and that was operated by the du Pont Company through the Laflin & Rand
2178 Company after the purchase of the Laflin & Rand in the fall of 1902.

Q. Down to what time did they continue to be thus operated? A. Until it was totally destroyed by an explosion I think about 1905.

Q. Now any other companies? A. The Northwestern Powder Company of Dorner, Indiana, was purchased at the same time that the Indiana was purchased. It was operated a very short time and the mills were abolished and torn down and the machinery removed.

Q. By "very short time" what do you mean, can you give an estimate as to the number of months? A. Very few months, probably—certainly not over a year.

Q. Were there any other companies that were ac-

quired during that period? A. Well, during the former period, prior to 1896, the Fairmont Powder Company had been purchased by the du Pont and Austin Companies at Fairmont, West Virginia, and that mill was operated and its product sold to the Fairmont Coal Company up until during 1902 when the mills exploded and they never were rebuilt.

Q. Under what circumstances did the associates acquire the Birmingham Powder Company, if you know, under what circumstances did they acquire it? How did it come about that the Birmingham Powder Company came into the association? A. It followed a very severe contest in prices and one that practically shut the Birmingham mills out of the market, and they were compelled to sell. 2180

Q. How long did they continue, Mr. Waddell, how long did this contest continue? A. About two years.

Q. Now with reference to the Indiana Powder Company, under what circumstances did that company come into the association, if you know? A. The Indiana Powder Company was formed by a gentleman from my employ, who associated with him a large number of coal operators. These operators were members of the Indiana Coal Operators' Association. They employed miners who were members of the United Mine Workers of America, a rival association. The mine workers contracted with the coal operators to purchase all their powder from them at $1.75 a keg. These contracts were usually made for two years' periods. In order to contest with the trade for these coal companies, the Associated Powder Companies through a committee represented by Mr. Barksdale of the Eastern Dynamite Company and the Repauno Company, representing the dynamite interests and Mr. Eu- 2181

gene du Pont and Mr. F. W. Olin, representing the black powder interests, organized the Great Northern Manufacturing Supply Company and capitalized it. The work of that—htey placed in charge of that company at Terre Haute, Indiana, Capt. Ramsey and Mr. Baccus, employees of the dynamite interests of the du Pont and Hazard and Laflin & Rand companies and Mr. Jones. This Great Northern Manufacturing Supply Company retailed powder to the miners of the operators who were stock-
2183 holders in the Indiana Powder Company and the Northwestern Powder Company as well. They built magazines for the storage of powder near the coal mines of all of these coal operators who were stockholders in the Indiana, and they sought to raise, and did raise dissension between the miners and the operators.

Mr. Katzenbach: We object to that.

The Court: That is generalization without any foundation.

2184 Mr. Abbott: I am inquiring, if your Honor please, about the methods that they used.

The Court: But here is a generalization, what did they do, what was done, what does this man know that they did?

Q. Do you know of your own knowledge the methods that were used in creating this dissension between the miners and operators? (Objection sustained.)

Q. You were proceeding to relate the methods that were used. Now, without making any further reference to these miners, to that matter, proceed with your recital of the methods that were used. (Objection sustained.)

Q. From whence did you acquire information

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concerning the methods which were used by the associates in this contest with the Indiana Powder Company? A. I received a telegram from the E. I. du Pont de Nemours & Company instructing me to meet Mr. Barksdale——

Mr. Katzenbach: We object to what the telegram contained.

A. (Continuing) And I went to Chicago.

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Mr. Abbott: Wait until the Court has ruled.

Mr. Katzenbach: I object to that; that is not the best evidence; the telegram itself is the best evidence.

The Court: Yes; that is the formal way of proving it. I will allow it.

A. (Continuing) I went to Chicago. There I met Mr. Barksdale at the Union League Club. He told me that "he had been added to the Committee to fight Indiana, that the black powder committee, Mr. Eugene du Pont and Mr. Olin had allowed that Indiana concern to grow up into a big one and it should have been killed off years before. And now they had built a dynamite plant close to their black powder mills and he had been added to the committee and he proposed that they organize the Great Manufacturing Supply Company." Mr. Barksdale wanted to get my ideas as to the methods of retailing powder, and he brought Mr. Ramsey to Cincinnati to see me. I took Mr. Ramsey up into Ohio to Logan, Ohio, and introduced him to Henry Spencer, an agent of mine up there, who had conducted a similar fight against Ohio Powder Company, and Spencer gave him instructions as to retailing powder to miners successfully.

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2188 *R. S. Waddell—Direct*

Q. Proceed and state what you know within your own knowledge, was done by the associates with reference to the employing of miners in that contest with the Indiana Powder Company. A. Nothing of my own personal knowledge.

Q. Did you have any knowledge that was given to you by anyone whom you represented, concerning that matter—did you have any information given to you? A. I would not be able to testify on that.

2189 Q. What else was done in this contest with the Indiana Powder Company?

Mr. Katzenbach: If he knows of his own knowledge.

A. The Indiana Powder Company was started in the spring of 1897, and in the fall of 1897 the contract system of tieing up the trade of the entire country was adopted by the Associated Powder Companies, and all of the companies contracted their trade for one, two or three years.

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Mr. Katzenbach: Well, now, we object to this unless the witness has some knowledge. I want to get at the source of his knowledge.

The Court: Yes; you are entitled to that.

Mr. Katzenbach: This is all hearsay, and the witness has no personal knowledge I believe of it, and I want to get at the source of his information.

The Court (to the witness): Mr. Waddell, of course, you must confine yourself to that and say what you did and had personal knowledge of.

The Witness: I have.

Q. Now, Mr. Waddell, state what you know about the adoption of the contract system at the present time with specific reference to its use with the contest with the Indiana Powder Company. A. I was called to New York by the Hazard Powder Company and to Wilmington by the du Pont Company.

Q. When? A. During the early fall of 1897, and I was told by the officers of the company, Mr. Eugene du Pont and Mr. Colvin, that it was the purpose to contract the trade of the country as generally as it could be done, and they wished to consult me in regard to the form of contract that should be adopted by all and made uniform by all the associated powder companies. Mr. Colvin showed me one form of contract that had been submitted by the Laflin & Rand Powder Company, another that had been submitted by the Miami Powder Company, Mr. Fay and another submitted by the Hazard Powder Company and a form that had been submitted by the du Pont Company. We consulted over the various paragraphs in the contract, and I gave my opinion as to whether a short form or a long form should be adopted and the difficulty of getting coal operators to sign a long and complicated contract and recommended that the form be as simplified as possible, and short as they could make it. And different forms, all of them very similar were adopted by the associated powder companies. One of them would be in what we knew as the soda powder——

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Mr. McCarter: I object to that.

The Court: You cannot go into the contents of a particular document now.

A. (Continuing) Those forms were printed and sent out to me for execution with the trade: I was required to——

Q. Sent out to you by whom? A. By the Hazard Powder Company and the du Pont Powder Company. I was required to make application under the compendium of rules, and I knew the particular rule that was applicable to this contract system and applying to the Hazard or to the du Pont Company, whichever it might be, for permission to contract with a given coal company or a number of coal companies, stating the number of kegs of powder I had sold that company during the preceding two
2195 years and the price, rebate if any, discounts or whatever the powder would net. I waited a certain time until information came back to me, either authorizing the contract or stating that we are not permitted to make it.

Q. Whom did that information come back from? A. It came from the officers of the Hazard Powder Company and the du Pont Company.

Q. Will you describe how that system was used with reference to the Indiana Powder Company contest? A. I can answer that for the Hazard and
2196 du Pont Companies. The trade that was tributary to Cincinnati, which included Indiana, part of Illinois, Ohio, West Virginia and Kentucky, that was contracted with every customer that we had of any consequence, that is that would take a carload or over per year.

Q. About what was the territory then which the Indiana Powder Company operated in? A. The first two years of its existence in Eastern Illinois and the State of Indiana, Northern Kentucky and a small part of West Virginia.

Q. Now then, within the territory which you have just indicated, will you state what you did with reference to making contracts with consumers of black blasting powder? A. The Hazard Powder Companies—the trade that was under my care we contracted with all its customers.

Q. How did you make use of the system of contracting with consumers of blasting powder with special reference to that contest—to the contest that was carried on at that time with the Indiana Powder Company? A. We contracted all the trade that we were permitted to contract under the rules of the association during the entire term of the Indiana existence. (Motion to strike denied.)

Q. I would like to have you state whether or not there were any other methods that were used in that contest of which you have knowledge? 2198

By Mr. Katzenbach:

Q. If you have knowledge of any methods, where did you get your information from, Mr. Waddell? A. From officers of the Hazard and du Pont companies.

Q. What officers of the Hazard Company? A. Mr. Colvin, president of the Hazard; Mr. Eugene du Pont, president of the du Pont Company.

By Mr. Abbott: 2199

Q. Mr. Waddell, describe what those methods were? A. The making of special prices.

Q. Describe just what the making of special prices was, how it was done. A. In cases where we failed to make contracts, the coal operator would not enter into a contract for a long term, and it was desired to close his trade—keep his trade permanent, we applied to the powder companies for privilege of making him a special price of five, ten, fifteen or twenty cents less than the schedule price fixed for the territory, and that in many cases, in fact, most cases, that privilege was granted us, and we made the special prices.

Q. Have you any data at hand from which you could give a list of such special prices as were made at that time? A. Only a partial list.

Q. Have you any knowledge of any such prices appearing in any of the minutes of the Gunpowder Trade Association which you at any time saw? A. Yes, a great many of them while I was at Wilmington, Delaware, acting on the Special Committee, I made, in conjunction with Mr. Haskell, authorized a great many of these special prices.

2201 Q. Now, did those special prices which you have knowledge of that were made, do you know whether any of them were entered at any time in the minutes of any of these meetings? A. Yes.

Q. Can you tell at this time what particular minutes there were that contained any of those recitals? A. They were generally recited in the report of the Special Committee to the Advisory Committee reporting their action.

Q. And you saw some of those reports at any time after they were made, did you? A. Yes.

2202 Q. Can you recall, Mr. Waddell, any special prices that you authorized or that you assisted Mr. Haskell in authorizing at any time? A. I recall numerous cases of making special prices through the Wilmington High Explosives Company to various railroad contractors on the Wabash Railroad about Pittsburgh and through Ohio, where they built the Wabash. I can not recall the exact name, and the date, or anything of that kind, but I know of a great many special prices.

Q. Did you have any knowledge of any special prices that were made previous to the time when you were asked by Mr. T. C. du Pont to represent him on this special committee? A. Yes, special prices that I had asked for for my own trade at Cincinnati.

Q. Can you give the names of any customers for whom you made such requests to make special prices?

Mr. Katzenbach: And also the prices.

Mr. Abbott: I will find out about the names first.

A. I could not do that from memory. That is ten years ago, and I can not recall the exact names, although I had a great many of them. (Motion to strike denied.) 2204

Q. Do you know anything about the company known as the Washington Fuel Company? A. Yes, I know of a company of that name in Indiana.

Q. Did you know of anything in connection with that company with reference to making special prices? A. I knew as to prices——

Q. Say yes or no, please.

Q. What was it that you knew about special prices that were made to that company? A. I knew that a special price had been made of ninety cents a keg. 2205

Q. I mean under what circumstances was that special price made. A. When was it?

Q. Yes, when was it? A. That was about the latter part of 1900 or the first of 1901, as I recall the date, and was made with relation to the contest that was going on in that district with the Indiana Powder Company.

Q. Well now then, state the conditions under which those special prices were made. A. There was a condition that they should sell powder to their miners at a lower price than the State agreement fixed.

Q. What was the amount that the State agreement fixed? A. $1.75 a keg.

Q. And what was the price that was made a condition to this consumer that he should sell to his miners? A. He should sell that at $1.25 a keg.

Q. Now, do you know whether or not those conditions or terms with regard to special prices were imposed on any others of the customers with whom you made special prices? A. I don't recall any.

Q. That was the only instance you have in mind? A. Yes.

2207 Q. Now, Mr. Waddell, at the time when these special prices were prevailing or being made with reference to the contests against the Indiana Powder Company, do you know what the regular price for powder was in other districts—the same powder, the same grade of powder in other districts than that which was affected by the Indiana Powder Company? (Objected to and objection overruled.) A. In the districts that I was familiar with, that is, the central district and the southern district, No. 2 and No. 3, the price outside of the trade reached by the Indiana Powder Company—the prices were

2208 maintained at $1.25 schedule and the $1.35 schedule for the south—southern states, south of the Ohio River. In the contested territory that was reached by the Indiana the prices were lower——

Q. How much lower; in other words, to what——

The Court: Let him answer the question; that is one way the witness and court get confused, when we don't get an answer.

A. The price went down as low as ninety cents per keg, delivered.

Q. Do you have any knowledge of the prices that obtained in any other portion of the United States in which the du Pont Company or the Hazard Company did business at this time? A. Only the terri-

tory that I reached, Virginia, West Virginia and the Southern States.

Q. Was there any price list or system of prices which were adopted by either of those companies at that time having reference to the entire trade of the United States? A. There never was a price list issued by the companies, any of the companies, that I represented for a number of years—fifteen years. The only prices that we had were the prices fixed by the Associated Powder Companies.

Q. These prices that were fixed by the Associated 2210
Companies, how did they compare with the prices that you were making in the contest against the King people in the other portions of the country, if you know? A. They were the prices that we were making——

Q. I am speaking now of the other portions of the country, Mr. Waddell. You have testified as to two districts which you had knowledge of as representing the Hazard Company and the du Pont Company. Did you have any knowledge of any prices which were made by the Gunpowder Trade Association in any portion of the United States other than 2211
the two districts that you have mentioned?

Mr. Katzenbach: He has previously answered that by saying that he only had knowledge of the portions of the country that he reached.

The Court: The two districts that he mentioned.

A. I had a general knowledge of the prices elsewhere. I didn't make the sales in other districts.

Q. What did that general knowledge consist of; how did you get that general knowledge? A. From the advices that were given me by the du Pont and Hazard companies. They gave me the price fixed for the districts that I came in contact with.

2212 *R. S. Waddell—Direct*

Q. I will ask you to state whether during the time of this contest with the Indiana Powder Company there was any difference in prices prevailing in the other districts of the United States, other than the two districts which you represented for the Hazad and du Pont companies.

By the Court (after objection):

Q. Did you obtain any information from these
2213 different offices, the Hazard and the du Pont offices as to the prices of powder in the districts other than those in which you made sales? A. I did, in the districts in which my territory—that my districts came in contact with.

By Mr. Abbott:

Q. What were those districts? A. Well, there was a dividing line across the state of Michigan, near Saginaw. I have forgotten the parallel—and I sold below that line. I knew the price that was above it—
2214 had to know it. And the same way on the western border. I knew the prices that obtained for the St. Louis district, because my line was the Illinois Central Railroad. That was a dividing line between us. It was necessary to give me the prices all around the territory, touching the teritory that I occupied solely.

Q. In any of those districts of which you had knowledge of these prices in this manner, will you state what the prices for black blasting powder was at the time this Indiana contest was on? A. The prices were maintained in all of the cases that I knew of, except the disturbed district that was reached by Indiana and Northwestern, extending from the Kanawha River in West Virginia to the Mississippi River and fom Saginaw, Michigan, from

the Lake to the north line of Tennessee. A little district in—then there was a disturbed district about the same time or had been just prior to that in or about Birmingham, Alabama, but that was local.

Q. You have testified concerning a company that was organized about the beginning of this contest —Great Northern Manufacturing and Supply Company, was it? A. That is right.

Q. Will you describe the condition, so far as you know with reference to the organization of that company, why it was organized? A. Mr. Barksdale or- 2216
ganized it as a member of the committee to conduct the contest with Indiana.

Q. What if any powers did that company have during this contest with reference to the contest? A. Did nothing but conduct the fight against Indiana; did no other business.

Q. Do you know how long that Great Northern Manufacturing and Supply Company continued in business? A. I don't know exactly the time but I should think about two or three years.

Q. Do you know when the corporation was or- 2217
ganized—what year it was? A. I don't recall the date.

Q. Do you remember what year it was when it discontinued business? A. It discontinued business in 1902, just after the sale of the Indiana.

Q. Do you know under what circumstances it discontinued business? A. Well, it made an assignment for the benefit of its creditors just after the sale of the Indiana in 1902.

Q. I believe you stated that the Indiana Powder Company had sold out after this contest, did you? A. Yes.

Q. Do you know anything about the terms and conditions under which it sold; what it received for its plant? A. Only by hearsay.

2218 *R. S. Waddell—Direct*

Q. Do you know of anything that was done—do you know who purchased it? A. Yes.

Q. Who? A. du Pont, Hazard, the Laflin & Rand, Austin, Equitable, Miami, American, and I don't know whether King got any of its stock or not,—I don't think so.

Q. After it was purchased, what if anything transpired with reference to the prices prevailing for black blasting powder in that district? (Objection overruled). A. They were immediately raised
2219 to $1.25 per keg throughout that district.

Q. How long did they continue at that price, if you know? A. Up until December 20, 1902.

Q. What change if any took place at that time? A. They were advanced ten cents a keg throughout that section of the country.

Q. What was the occasion for that advance, if you know? A. That followed a meeting on the 19th of December, 1902, at which the association advanced the price.

Q. What occurred at that meeting which had
2220 any reference to the advancement of prices at that time?

Mr. Katzenbach: Well, was he at the meeting?

Q. I will ask you to state whether or not you were at the meeting. A. I was not at the meeting.

Q. Do you know anything that occurred at that meeting; did you get any information concerning anything that occurred at that meeting? A. Yes, I talked to the men who were there.

Mr. Katzenbach: I object.

The Court: Will you show how first?

Q. How did you obtain any information as to what occurred at that meeting? A. I talked with Mr. T. C. du Pont and Mr. Moxham who attended the meeting.

Q. What if anything, was said to you by either of these gentlemen, as to what occurred at that meeting? (Objection overruled).

By the Court:

Q. (To the witness) Mr. Moxham and who else? 2222
A. Mr. T. C. du Pont. Mr. T. C. du Pont told me that Mr. Moxham had made his speech and presented his report to the meeting. It was received with a good deal of favor and that the prices had been advanced and I would get notice on the following day of the advance, and I did so.

Q. In what way did you get notice? A. A letter from Edward Green, Secretary of the meeting of the Association.

Q. Now, I show you Plaintiff's Identification No. 22, and ask you to state whether or not you have any knowledge of what that document is? A. Yes. 2223

Q. What is it? A. It is a speech of Mr. Moxham —Mr. A. J. Moxham—report made at the meeting of December 19, 1902.

Q. Did you read the testimony that Mr. Moxham gave the other day? A. I did.

Q. Did you hear his testimony with reference to this document? A. I did.

Q. Is this the document he testified he gave you? A. Yes.

(Plaintiff's exhibit 22 for identification received in evidence as Exhibit 22 and read to the jury.)

Q. Mr. Waddell, in reference to the contests which were had between the members of the association and any of the companies which preceded the Indiana Powder Company, I would like to inquire what if any change in price there was after the contests ceased as compared to what the prices were while the contests were on? A. In 1886, the first of July, 1886, when the first pool was formed the price of rifle powder jumped on telegram from $2.25 a keg to $5.00.

2225 Q. That was after the close of what contest? A. Against the King and the Ohio and the price of blasting went up from 80 cents to $1.50 on blasting.

Q. After the next contest, how about the matter of prices? A. The 1st of July, 1896, the price advanced from 80 cents on blasting powder to $1.25 on telegram and on rifle powder from $3 to $5.

Mr. Button: What date was that?
The Witness: 1896.

Q. What contest did that follow? A. That was
2226 the contest against the Equitable, Phoenix and Chattanooga.

The Court: That was in 1896, you say?
The Witness: 1896.

Q. After the contest,—after the next contest, how about the prices before and after? A. Prices advanced immediately on telegram, from 90 cents the low limit to $1.25.

The Court: What date is that?
The Witness: That was January, 1902.

Q. You have stated that these prices were advanced on telegram. How were those telegrams sent out, who were they from? A. By all of the companies in the Powder Association.

Q. To whom were the telegrams sent? A. They were sent to the general agents and through the general agents to the—they were given to the salesmen and to the trade of the country.

Q. Did you, as one of the general agents receive advices by telegram? A. Always.

Q. And from whom did you receive your advices? A. From the officers of the Hazard Powder Company and the du Pont Company while I served them.

2228

Q. I will ask you if you recall a conversation that you had with Mr. T. C. du Pont with reference to a man by the name of P. H. Donnelly while you were in the employ of the du Pont Company at Wilmington? A. Yes.

Q. Before asking you further as to what that conversation was, will you state who P. H. Donnelly was at that time? A. He was a salesman employed by the Chicago office of the du Ponts and Hazard companies.

Q. Do you know where Mr. Donnelly is at the present time? A. I believe he is still employed by 2229
the Chicago office.

Q. Now then, state what the conversation was that you had with Mr. du Pont with reference to Mr. Donnelly? A. Mr. du Pont came to my department——

The Court: Mr. T. C.?
The Witness: Mr. T. C. du Pont.

A. (Continuing)—and asked what I could suggest be done with reference to stopping Donnelly from hiring howlers in coal mines, and explained that he had howlers who were paid to raise trouble if any other than du Pont brand came in the mines at Springfield and in Northern Illinois and in Iowa. Mr. du Pont said that complaint had been

made by our associates of this practice and wanted to know if we could not stop it. I told him that I had no control over the Chicago office, it was not under my care as general sales agent, and he would have to look after that matter himself.

Q. Now, then, what was the occasion of this conversation that you had with Mr. du Pont at that time? A. (After argument).

Q. Do you recall the circumstances under which that conversation came to be held between you and
2231 Mr. T. C. du Pont? A. Yes.

Q. Relate those circumstances? A. The Oriental Powder Mills had a contract that had been authorized and that had been made and enjoyed for a couple of years with the Smoky Hollow Coal Company of Avery, Iowa.

By Mr. Katzenbach:

Q. Is this something that was stated by Mr. du Pont in this conversation with Mr. Waddell? A. No.

2232 Q. Is this something, this contract, that you know of of your own knowledge? A. Yes, sir.

Q. Where did you get your information? A. I got it as a member, as acting for Mr. du Pont on the Special Committee and as General Sales Agent of the du Pont Company.

Q. Whom did you get it from? (Objection overruled). A. I got it from the Oriental Powder Mills, as agent of the du Pont Company.

By Mr. Abbott:

Q. Proceed. A. Complaint had been made by the Oriental Powder Mills that they were unable to supply powder to a customer with whom they had a contract, the Smoky Hollow Coal Company at

Avery, Iowa, because the du Pont Company through Mr. Donnelly had howlers in the mines in Smoky Hollow Coal Company and they would raise a disturbance when the Oriental powder went into the mines and they asked us—asked the du Pont Company to stop that method. That the Oriental was entitled to the trade, that was conceded and that was what Mr. du Pont was trying to stop.

Q. On page 1584 the witness stated as follows: "Then I went to Cincinnati, leaving Wilmington on the 5th of July, 1902, and was there joined by 2234
Mr. French in behalf of the King Company, and we personally traveled the entire district, calling on ecah one of the parties named in that list, and were both present when the contracts were signed for the du Pont, Hazard and King Companies." I will ask you Mr. Waddell, whether you desire to make any correction of that statement? A. Yes, in reading over the testimony I recollected that on the first trip I made to the Pocahontas Coal Field, Joseph French of the King Powder Company, went with me. On the second trip, on or about 2235
July 14, 1902, Mr. Pickard, representing the King Mercantile Company, went with him, and the contracts were made out in the name of the King Mercantile Company instead of the King Powder Company.

Q. What was the King Mercantile Company?

Mr. Button: Did he give the dates of those respective trips?

A. (Continuing) The first trip was about July 15, 1899, and three years after that on July 14, 1902, I made the second trip. (Question repeated by the reporter). That was a selling company that had a contract with the King Powder Company to sell its output.

Q. And what relation, if any, did that sustain to the interests which you were representing? A. The King Mercantile Company was composed of the du Pont Powder Company and the Laflin & Rand Powder Company.

Q. Did Mr. du Pont or any other person in connection with the offices of the du Pont Powder Company or the Hazard Powder Company which you were representing, come to you at any other time or discuss with you at any other time the mat-
2237 ter of employment of miners or the question of stopping the employment of miners or raise objection to the bringing of other powders than du Pont powder into the minds of customers? A. I don't recall any such conversation.

Q. Can you state of your own knowledge the relation that existed at this time between the Oriental Powder Mills and the interests which you represented? A. Yes.

Q. What was that relation? A. The Oriental Powder Mills were owned entirely by du Pont, Hazard, and the Laflin & Rand Powder companies. du
2238 Pont owning Hazard, owned two thirds of Oriental and after the purchase of Laflin & Rand they owned all of Oriental.

Q. I desire to call your attention to this part of the speech of Mr. Moxham, found on page 214, the same being sub-divided "C" under the head of "Conclusions": That the above advance in prices be doubled provided the committee on competition will provide machinery which in the judgment of the Advisory Committee will restrain internal competition and which will put the question of external competition into the hands of a properly organized working committee." Now, I will ask you to state whether or not you know anything about any such committee or such machinery having been provided after that speech was made? A. Yes.

Q. Now, what was that machinery which was provided? A. Mr. Moxham told me that he had been elected chairman of the Finance Committee which was to look after that outside competition.

Q. Now, Mr. Waddell, during your representation of the du Pont and Hazard interests, at Wilmington, did you at any time exercise any independent authority with reference to such matters as had been committed to your hands by Mr. T. C. du Pont with reference to the Trade Association? A. No.

Q. Will you explain where you obtained the au- 2240
thority that you exercised with reference to the duties which were committed into your hands, how did you proceed to perform those duties? A. I knew the compendium of rules governing the apportioning of trade under contract; I knew the working of the Powder Association, their method; that contracts were to be awarded according—and rebates allowed, according to a schedule of quantities that consumers would take, and when application was made to the Special Committee, it was a question of determining, according to the rules, that had been 2241
established by the Association, what the Committee should do and I was governed by those rules and followed them.

Q. Did you or did you not at any time fix any price or the terms of any contract independently of this authority which had been conferred upon you? A. No, I had no authority for anything of that kind.

Q. I will ask you whether at any time during the time which you represented the Hazard Powder Company at New York, Cincinnati or Wilmington, you ever, of your own independent authority made any prices or attempted to perform any duty independently? A. Never.

Q. Do you know anything about an organization

—do you know anything about what is known as the "High Explosives Companies"? A. Yes.

Q. Will you state what that concern was—or what the term means?

Mr. Katzenbach: I would like to have you ask the source of his information.

Q. Where did you obtain any information regarding that matter? A. I knew the ownership of
2243 the "High Explosives Companies" from the time they were—commenced doing business all the way through.

Q. How did you obtain that knowledge? A. Well, from the Hazard and du Pont officers and from contact with the High Explosives people, I represented them.

Q. Explain what the "High Explosives Companies" was?

By Mr. Katzenbach:

2244 Q. I desire to ask you from what officers of the Hazard Company you obtained any knowledge of the company known as the "High Explosives Company," when and where? A. R. L. Wheeler, vice-president; William Colvin who was vice president and later president of the company; from Mr. George Weightman, treasurer of the company; from Eugene du Pont, Alexis I. du Pont, and William du Pont who visited me at Cincinnati and various other sources, from various other sources I knew the ownership of the "Explosives Company."

By Mr. Abbott:

Q. Now state what the "High Explosives Companies" was, will you? (Objection overruled). A. Repauno Chemical Company, Hercules Powder Company, Atlantic Dynamite Company, Forcite

Dynamite Company, and the holding company, the Eastern Dynamite Company with which Mr. Alexis I. du Pont was connected.

Q. Now, then, what was the purpose of the High Explosives Company? (Objection sustained).

Q. I will ask you whether or not you had at any time any business relations in the performance of your duties on behalf of the Hazard Powder Company and the du Pont Company with the "High Explosives Companies"? A. Yes, I——

Q. Wait a minute. What were those relations? 2246
A. I was the agent of the Repauno Chemical Company at Cincinnati for a number of years.

Q. Yes. A. And sold dynamite through the Hazard Powder Company and accounted to the Hazard for it. I came in contact there with the dynamite company.

Q. Did you at any time have anything to do with any applications to the High Explosives Company concerning contracts? A. Yes.

Q. State what that was? A. While I was acting for Mr. du Pont on the Special Committee, the Special Committee awarded a number of contracts and 2247
special prices to the trade of the company though the Wilmington "High Explosives Companies."

Q. Now, can you give any reason why these contracts which you refer to were made through the Wilmington High Explosives Companies?

By Mr. Katzenbach:

Q. Were they dynamite contracts that you were referring to? A. What is that?

Q. Were they dynamite contracts? A. Black powder.

(Last question by Mr. Abbott, objected to and objection overruled).

2248 *R. S. Waddell—Direct*

A. I will have to get that question again please. (Question repeated by the reporter.) A. Yes. The Wilmington High Explosives Companies that I have named, were enormous manufacturers of dynamite; and in the sale of their dynamite they required some black powder for their customers, and they obtained that through the—from the black powder companies who were in the association, and they made application for special prices and for contracts to be used in connection with their dyna-
2249 mite contracts with railroad contractors and public contractors, and where the quantity of black powder was very small as compared with the dynamite, the sales were made through the High Explosives Companies, whichever one happened to have the contract with the trade.

Q. Did any of the black blasting powder companies or manufacturers of black blasting powder have any interest in any of those contracts? A. I don't understand that question.

(Question repeated by the Reporter).

2250

A. No, the contract would be awarded to the trade through the "High Explosives Companies."

Q. I understand that. But how did the "High Explosives Companies" obtain the black blasting powder which they required? A. They received that from the members of the Association who were authorized to sell or contract.

Q. Mr. Waddell, how long did you remain in the employ of the Hazard and du Pont interests at Wilmington, when did you leave their employ? A. February 2, 1903.

Q. Now, what was the occasion of your severing your relations with those interests? A. I resigned my position in November, 1902.

Q. What was the occasion of your resigning your connection with those interests? (Objection sustained).

Q. You heard the testimony of Mr. T. C. du Pont concerning your tendering of your resignation? A. I did.

Q. I will ask you to state the circumstances leading up to the fact of your resignation to the du Pont interests; as representative of the du Pont interests? A. There was some dissatisfaction arose between the sales department, purchasing department, auditing department, and the executive department, through Mr. du Pont, and it couldn't be arranged satisfactorily, and I withdrew from the service of the company. 2252

Q. When you tendered your resignation what if anything transpired, what if anything was said to you by any officer or representative of the interests which you had hitherto represented? A. Mr. T. C. du Pont asked me to come to his room when he received my resignation—and——

Q. Did you go? A. I did.

Q. What was the result of your visit to Mr. T. C. du Pont? A. The conversation between us in which he said that—— 2253

Q. Then relate the conversation? A. He said he regretted that I was going to leave them and asked if I wouldn't consent to remain that he thought possibly the differences between the departments could be adjusted, and I told him I thought not. He then made me a proposition.

Q. What was that proposition? A. It was oral; he said if I would drop the matter, remain where I was, that he expected to have the organization of the company complete in a short while and he would give me $25,000 of the preferred stock which he expected to put on the market at seventy dollars dollars a share and twenty-five thousand dollars of

the common. I asked him what the common was worth. He said "nothing when it will be issued, but it is a good thing to lay in the drawer of your desk and when we put it on the market it will go to par, we hope." I declined the offer and told him that I would prefer to go into business for myself and establish a business for myself and my sons and I thought it was the proper time to do it.

Q. Now, what did he say in answer to that statement made by you? He asked me what kind of
2255 business I was going into. I told him I thought I would build a small mill. I thought I had been with the company long enough to earn that right to have a little business of my own. He agreed with me; said he thought I had. He then made me another proposition—whether it was at that interview or one held a day or two afterwards I don't recall, but there was another verbal offer made by him.

Q. What was that proposition? A. He recommended that I go to New York City and establish a
2256 firm—R. S. Waddell & Company, the "Company" would be the Powder Company, The du Ponts——

Mr. McCarter: Beg pardon. I didn't hear that Mr. Waddell.

The Court: The "Company" would be the du Pont Company.

A. We were to be brokers for the purchase of soda, importation of soda and all mill supplies, raw materials, not only for the du Pont interests but for others who were associated, and to whom we could probably sell.

Q. What did you say in answer to that proposition? A. I told Mr. du Pont that I knew nothing about the importation of soda, that I didn't want to learn a new business, at my time of life, and I

didn't want to go to New York City and engage in the brokerage business and declined the offer.

Q. What then, if anything did you say to him concerning your plans or did he say to you? A. He asked me about what size mill I expected to put up; I told him one with a capacity not to exceed 1200 kegs per day, that I didn't expect to produce that quantity at the start, probably 400 or 600 per day, but later I wanted the plant to grow to a capacity of probably 1200 kegs per day. He said, "Well, just let the matter rest for the present, continue on in your duties, you have suggested in your resignation that you would be willing to remain over thirty days until we could install your successor. Remain here a while and we will make you another proposition." I did so.

Q. Now, then, you remained then, did you? A. I did.

Q. Now, did he at any time make you another proposition? A. The matter was delayed until after the first of the year. My resignation took place I think on the 26th of November and these conversations occurred soon after that. Then there was a delay of about a month, possibly longer. Certainly up into January. And he made me a proposition in writing.

Q. Have you that proposition? A. I gave the original to the Government.

Q. I show you sundry Government exhibits on page 2105 and subsequent pages, beginning with No. 285 and continuing to 288 G, and ask you to look at those documents and state whether or not they have any relation to the negotiations which you had with Mr. T. C. du Pont at this time? A. I have read these before, and I can say that the letters on page 2105, beginning—the one addressed to Mr. du Pont and closing on page 2127, are correct copies.

2260 *R. S. Waddell—Direct*

Q. What did you do with these documents—how did they come to be in this Government's record, if you know? A. I offered them in evidence in the Government case in explanation of my testimony.

Q. I will ask you to take these documents which are marked as Plaintiff's identifications, beginning with 41 and subsequent numbers, and state whether or not those documents contain all the subject matter of the negotiations between yourself and Mr. du Pont at that time, or were there other matters
2261 outside? A. These contain all.

(Exhibits 41 to 51 for identification received in evidence as Exhibits 41 to 51 inclusive and read to the jury.)

Q. Mr. Waddell, I will ask you what these notations shown on the margin of this exhibit (44) which I have just read to the jury indicate? A. They were my marks on the side of the letter.

Q. I note Mr. Waddell, that there are some notations on the side of this document (Ex. 45). Do
2262 you know what those refer to? A. Those are my comments.

Q. Mr. Waddell, preliminary to further questioning, I notice in this correspondence some reference is made to various grades of powder called "C" and "CC" and "CCC" and "FFF." Will you give the jury some idea about that matter? A. Not a grade of powder, but grains, sizes of grains. Powder is manufactured in six sizes. CCC means triple coarse, CC means double coarse and C means coarse. Then we have grains that are F, FF and FFF. The grain referred to in there FFF, means triple fine, those are the finer grains.

Q. Will you state what the relative principal uses of these various grains of powder are in black

blasting operations and coal operations—just generally? A. Powder is all made in one cake——

Q. Not how it is made, but how it is used? A. You have fine grained and larger grained, the smaller the grain the quicker it burns; the larger grains burn slowly. And in the blasting of coal the larger grains have a pushing effect and will follow a seam or crack, throwing down large bodies of coal, and it depends upon the strata of coal, the character of coal, what sized grain is best adapted to it for blasting. In West Virginia they use a 2264
finer grain than this (indicating). This is a double fine. They want a very quick powder there, because the coal is soft, and it would push it out without throwing down large masses.

Q. Then the use of the various grains of powder depend upon largely, upon the nature of the coal field? A. Nature of the coal, and the kind of mining.

The Court: Kind of what?

The Witness: Kind of mining.

A. (Continuing). Whether it be mined off the 2265
solid by hand-mining, or the coal is under cut for a depth of five feet or six feet by machinery; in that event they use a slower, larger grain.

Q. While on that matter, will you explain to the jury what "shooting off the solid" is, and what "under-cutting" is? A. Coal lies in veins usually from four to six feet, and then a strata of fire clay underneath, as a rule and rock or slate over the coal, and it is pressed in between that. That makes the face in a room, in a coal room, that is the room is about 25 feet wide and the face of the coal would be 6 feet high and 25 feet wide. Take shooting off the solid, they do not cut under it in any way at all, not even with a pick. They put a bore hole in usually at a

slant and the charge of powder is put at the rear end of the bore hole, well tamped or stemmed with clay and the powder must force the coal out, tearing it from the roof and from the bottom. In the machine mined coal, there is a channel of four or six inches cut in the coal to a depth say of six feet clear across the room. The coal is then hanging suspended, clinging to the roof and to the side walls. It requires less powder to drop that coal down and break it, than it would to blow it out of the solid
2267 where it clings both to the floor and the roof.

Q. Mr. Waddell, after this last letter which was received by you from Mr. T. C. du Pont did you then sever your relations with the company? A. I left the office that evening—the evening of the second of February, 1903.

Q. What steps if any, did you then take with reference to your future business operations? A. I remained in Wilmington for about three days; I went around and called on all the gentlemen that I had been associated with and left Wilmington I think the 5th of February, I stopped——
2268

Q. 1903? A. 1903.

Q. Where did you go after leaving Wilmington? A. The first place I stopped was at York, Pennsylvania.

Q. In order to save time I will ask you to describe your movements after you left the du Pont Powder Company, left its employ, until such time as you located your powder mill at Peoria. That will take some time to explain, but I believe it will be the best way to reach the point. A. I will state it as briefly as possible. I visited York and got options on machinery good for sixty days—powder mill machinery. Visited Chicago with a view to calling on a number and soliciting stock for my company; finding some of the parties absent I went to Cincinnati. The day after arrival there

I visited Hamilton, Ohio, and secured options on engines; and visited Dayton, Ohio, and secured options on a press; and at Cincinnati secured options on an entire line of electrical apparatus, machinery, from the General Electric engineers; and while there I was handed a letter by a gentleman that I had known.

Q. What was that letter that you were handed? A. Signed J. H.——

Mr. Katzenbach: We object to that. If 2270
you have got the letter just produce it.

A. (Continuing) The letter is in the Government record.

Q. Just go on and I will produce it later, in a moment. What happened after the letter was handed to you? Don't state anything about the contents of the letter? A. I subscribed the stock of the company in Cincinnati, I had taken subscriptions in Chicago for $5,000 for Mr. Keeler and all the balance of the stock was subscribed in Cincinnati after I had made the original subscription of 2271
fifty-one per cent. of the stock. Leaving Cincinnati I visited several towns in Illinois under my middle name, Stewart.

Mr. Katzenbach: That is objected to.
The Court: I will allow it as a fact.

Q. Now Mr. Waddell I show you Government's Exhibit No. 44 on page 253 of Vol. 1 of Government Exhibits and ask you to look at that document and state whether or not that has any reference to the letter which you say you were handed? (Handing book to witness.) A. I gave the original letter to the Government.

Q. What relation does this letter sustain then to

the letter which you say was handed to you at Cincinnati? A. That is a copy of the letter.

Q. What did you do with the original of that letter that you saw? A. Gave it to the Government.

Q. Have you seen it since? A. No.

Q. Do you know who Mr. Shoemaker was at the time that letter was written? A. Yes.

By Mr. Katzenbach:

2273 Q. Do you know anybody personally by the name of Shoemaker? A. I made inquiry as to what his business was.

Q. Then your knowledge consisted of what you were told by some one else? A. Why yes, by his people that employed him.

Q. By his people? A. Yes.

Mr. Katzenbach: I object to that.

The Court: He said "by the people who employed him." Go on.

By Mr. Abbott:

2274 Q. Who were the people who employed him? A. Pinkerton Detective Agency.

Q. What did they say—what relation did he sustain to the Pinkerton Detective Agency, if any? (Objection overruled.) A. He is superintendent.

Q. Located where? A. He is now located in Chicago.

Q. Where was he located then? A. Philadelphia.

The letter referred to was offered in evidence and said offer was objected to on the ground that it was irrelevant and immaterial and said objection was sustained. To which ruling of the Court plaintiff's counsel then and there excepted and said exception was allowed.

The letter so offered and refused reads as follows:

Chicago, Feb. 13, 1903.

H. A. Koach, Esq.,
c/o Stratford Hotel,
Cincinnati, Ohio.

Dear Sir:

This will be handed to you by Cpt. H. R. Saville of the Philadelphia Agency, who has been engaged in shadowing the party I wired you about in cipher, as follows: 2276

"Wire immediately if R. S. Waddell of Wilmington, Delaware, is now in Cincinnati; think can be found South East corner Third and Broadway. Want to place shadow; therefore, inquire carefully."

and to which you replied as follows:

"Mail at party's office Union Trust Building indicates he will arrive tomorrow. He has home and family in this city." 2277

Will you kindly assist him as much as possible in locating the party, and just as soon as he locates him, he is to wire to Chicago for assistance.

Yours truly,

(Signed) J. H. Schumacher,
Sup't.

H. W. M.—M.

Q. After you received this letter, what if anything did you discover or do that had any bearing upon your movements?

Mr. McCarter: I object to that word "discover."

The Court: The word "discover?"

Mr. McCarter: It is what he did in fact.

Q. Well, what did you do after the receipt of that letter? A. I went down to the Stratford Hotel and hunted up the party referred to.

Q. Did you succeed in finding him? A. I did, I found out his business.

2279 Q. Mr. Waddell, what date was it, if you recall, when you organized the Buckeye Powder Company? A. The 28th of January, 1903.

Q. When was the first meeting held? A. I think the following day.

(A certified copy of the articles of incorporation of the Buckeye Powder Company received in evidence and marked Plaintiff's Exhibit 1153); also a receipt of the Secretary of the State of Delaware for the payment of the annual fee, for December 30, 1912, re-

2280 ceived in evidence and marked Plaintiff's Exhibit 1154).

Q. The Buckeye Powder Company is still active as an organization, is it Mr. Waddell? A. Yes, sir.

Q. Now, Mr. Waddell, referring to the letter which you said you found in Cincinnati, I will ask you to state what you did by reason of having seen that letter afterwards with relation to the steps which you took—future steps that you took—concerning the location of your mills? Can you answer the question? A. I left Cincinnati as quietly as possible, slipped away and had my dress suit case taken to the depot by my son, who was a student in the city, left my hotel bill unpaid, and money with him—with my son—to pay it a couple of days later

and an order for my trunk which he was to receive so that I might not be——

Q. Now, don't give any conclusions? A. Yes.

Q. What did you do then? A. I then traveled through the states of Illinois, part of Missouri, under my middle name W. R. Stewart. I registered at hotels and avoided as much as possible all public appearance.

Q. Where did you go in your efforts to find a location? A. I went first to Litchfield, Illinois; finding nothing there I went to Hannibal, Missouri, 2282
looked over the surroundings there and there was nothing that met the requirements. I went from there to Quincy, Illinois, and from there to Springfield, and examined that neighborhood about Riverton and other locations. From there I went to Petersburg, Illinois and from there to Peoria.

Q. At Peoria, what did you do with reference to making a location? A. I went out on all of the railroads, twelve of them, running into the city, and searched for a suitable location. It was very difficult to find a location for a powder mill. 2283

Q. Tell the jury what requirements in your judgment were necessary for you in obtaining a proper location for a powder mill? A. The location must necessarily be on an important railroad that was capable of making rates and securing good rates from other railroads, and where sidetrack facilities could be obtained. It must be located a long ways, fully a one-half mile distance from any inhabited dwelling, to comply with the laws of the state. That necessitated a very remote section where no part of the land was within one-half mile of an inhabited dwelling. The location must have good water facilities for boilers, steam purposes; it should be rough ground where there is natural protection in valleys and ravines and timbered well for protection of one

mill from another, otherwise barricades would have to be built between mills.

Q. Protection in what respect? A. From explosions—in the event of explosions. They should be widely separated and in separate valleys if possible. The location must be near enough to a village or town or city to afford church and school facilities for the workmen; they would not be satisfied in a remote country district. There were number of requirements, all of which must be complied with to
2285 make a suitable powder site.

Q. Now, did you find those requirements in the site which you selected at Peoria? A. I did.

Q. How far from Peoria was this site? A. About fourteen miles.

Q. Near what railroad station? A. Near Edwards, it is in between Edwards and Cram Station on the C. B. & Q.

Q. I wish you would tell in a general way how the powder mill is constructed, that is to say how the various buildings are constructed with relation to each other, the distance they are apart and gen-
2286 erally everything.

Mr. McCarter: Is this the powder mill, is that the question?

Mr. Abbott: Yes, the powder mill.

A. The site that I selected was a valley running —facing on a railroad track with hills—little hills, abutting hills on each side of the valley. The valley was about 600 feet in width. The hills were timbered, heavily timbered. The front of the plant was on the westerly hills, in front of the westerly hills, and the stock houses, the machinery, power houses, all of the—where the raw material was prepared for making powder, was stored on the front

of the hill out of danger, and where an explosion in the hills could not affect the vital part of the plant, the power house.

Q. Now, in taking steps for your location at this point, what if any requirements were there, legal requirements which you complied with? A. I felt that there was a legal requirement that I get some protection against injunctions that might be agitated against me. (Objected to and objection sustained).

Q. What I am inquiring about now Mr. Waddell, 2288
is the legal requirements that you were compelled to follow with respect to the location of your plant under the laws of the State of Illinois? A. I was compelled to be a half-mile from any inhabited dwelling.

Q. I understand that, but what steps did you have to take in order to comply with that legal requirement, was there any proceedings in court or otherwise? A. I did take proceedings in court.

Q. Yes, that is what I am inquiring about; what was the nature of those proceedings?

A. I secured the services of the county surveyor 2289
who made a plat of all the surrounding territory, showing that the location of the plant complied with the law—that it was a half-mile from any inhabited dwelling and was not on a highway. I took that to attorneys who filed a petition in court setting forth——

Mr. McCarter: We object.

The Court: Never mind, the details; you took steps and you secured the right, did you?

The Witness: Yes.

Q. Did you then proceed to acquire title to the

land from the former owners of the property? A. I took an option on the land for sixty days.

Q. Did you afterwards conclude that option? A. I did later on; after I had——

Q. Well, never mind, now what did you pay for the land which you purchased at that time? A. $5,450.

Q. How many acres was it? A. 110 acres.

Q. Do you know anything about what the value of adjoining land was at that time? A. Yes.

2291 Q. What was the date of the purchase of this property? A. About March, 1903—I have forgotten the exact date—April.

Q. Mr. Waddell, what if any difference is there in the character of the land which you bought—this 110 acres for use as a powder plant—for your powder plant, and the surrounding land? A. I think the section, the part that I selected was very much superior to the surrounding land for powder purposes, but the adjacent land was similar in many respects.

2292 Q. Was the surrounding land valuable for powder purposes at all, in your judgment? A. No, I think not.

Q. I will ask you Mr. Waddell, what your knowledge was of the value of lands that were used for powder plant and powder plant purposes in 1908. (Objected to and objection overruled.) A. What was my experience?

The Court: What was your knowledge, derived in any way?

A. (Continued): I had purchased a great many sites for magazine purposes. I knew the values of land, especially required for magazines, the difficulty of locating them I knew the values of powder mill sites for land peculiarly adapted for that pur-

pose and there are only a few sites in the country that would compl ywith the laws and be wall adapted for protection in the building of plants, they are very rare, and I know the exceptional value of such plants above the value—the ordinary value of farm lands or lands for other purposes. I had purchased in all the Southern states through the Central States for both the Hazard and the du Pont Companies for a term of years, and I think I know about what the difficulties of locating and complying with the laws were, and with the requirements 2294
of the neighborhood, and what the peculiar value is given to magazine locations.

Q. Now, then, applying that knowledge to your location, to the location of the Buckeye Powder Company mills, and the plant in 1908, what would you say was the true and fair value of that ground on which the plant was located at that time——

Mr. Katzenbach: You mean of course for a powder mill.

Q. (Continuing) I mean for a powder mill. (Ob- 2295
jected to and after a qualifying examination by defendant's counsel, the objection was overruled). A. That includes machinery?

Q. No, only the ground, at this time? A. Ten thousand dollars.

Q. That is outside of the actual value of the buildings and machinery? A. All improvements, yes.

Q. While we are on this subject, I will ask you to state what was the total cost of the buildings that you erected on this ground for powder purposes? A. The total cost of our plant was approximately 117——

Mr. McCarter: One moment, I think we are entitled to the actual cost.

Q. I asked about the buildings, but if you cannot segregate—— A. I cannot do that, I would have to deduct the price of the land from the other; I know the total cost of the whole plant.

Q. Including machinery and all? A. Including everything.

Q. What was the total cost then of the plant including machinery? A. $117,000, approximately.

Q. Was there any depreciation in the value of your plant, the mills, machinery, the buildings and
2297 so forth, between 1903 and 1908 when you disposed of it? A. No.

Q. Now, then, will you state what methods you undertook or used with reference to the purchase of machinery and the character of the machinery which you used in this mill and plant of the Buckeye Powder Company? (Objection overruled.) A. I applied to the only people that I knew were in position to furnish me powder mill machinery and got options on— —.

Q. Now, state to whom you made applications
2298 for powder mill machinery? A. I took an option from Baugher, Kurtz & Co., York, Pa., for sixty days. I applied to I. & E. Greenwald & Company.

Q. What did you take an option upon? A. Upon powder mill machinery, not complete for the mills, but most of it. I applied to I. & E. Greenwald & Company from whom I had had previously had an estimate on a powder mill, and who built the Indiana powder mill machinery, and they refused to sell me. (Objection overruled.) I applied a little later to Olin Scott, builder of powder mill machinery, at Bennington, Vermont, to sell me a corning mill.

Q. Did you succeed in making any purchase of him? A. He refused to——

Q. Give the list of those persons to whom you applied first and then we will take u pthe other

matter? A. Prox-Brinkman Manufacturing Company, Terre Haute, Indiana, built machinery for the Indiana Powder Mills, they declined to sell me, and Pusey & Jones, Wilmington, Delaware, who built machinery for the du Pont people, they declined to quote me. (Motion to strike denied). Allentown Foundry and Machinery Co., Allentown. I applied to them for a press, and they declined.

Q. Were there any others? A. That is all I recall.

Q. Now, then, will you state what if any reasons 2300
were given to you—or in the first place I will ask you to state if these persons or any of them at the time when you made application gave you any reason for declining to sell machinery to you? A. Yes.

Q. Do you know of any relations, business relations or contract relations which existed between Olin Scott and the du Pont Powder Company with reference to the sale of powder machinery? A. Yes.

Q. From whom did you obtain the information, or from whence did you obtain the information, as to the relations between Olin Scott and the du Pont 2301
interests? A. From Olin Scott's letters.

Q. Only from him? A. Only from him.

Q. Now, were any reasons given to you by Prox Brinkman Manufacturing Company? A. Yes.

The Court: I will allow the fact that reasons were given, but not the reasons.

Q. The reasons which they gave you, were reasons which they gave for declining to sell you?

Mr. Katzenbach: That is objected to as leading.

The Court: That is inferable anyhow.

Q. All right, as long as it is understood. Were

any reasons given to you by the Allentown Machine & Foundry? A. Yes.

Q. By the A. G. Greenwald Company? A. I. & E. Greenwald—yes.

Q. By Pusey & Jones? A. Yes.

Q. Now, I ask you to answer the general question whether the reasons that were given to you by each one of these parties were of a similar character or not? (Objection sustained. To which ruling of the Court, plaintiff's attorney then and there
2303 excepted and said exception was allowed.)

Q. Were any reasons given by Bauer, Kurtz & Co.? A. No.

Q. Now, of whom did you finally purchase your machinery? A. Bauer, Kurtz & Company and later of Prox-Brinkman.

Q. Mr. Waddell, after you located your plant and constructed your buildings, what then did you proceed to do? A. Manufacture powder.

2304 Q. How long did you continue to manufacture powder? A. Up to about the first of September, 1908.

Q. Were there any interruptions during that period of your business? A. Yes, sir, there were some breaks in the operation.

Q. State how and when those interruptions occurred? A. They occurred at different times; when my magazine would get so full that I couldn't store any more powder, and I couldn't sell it, I would have to quit for a little while until I relieved the magazine.

Q. Did any interruptions occur at any time on account of explosions? A. Yes, I think we had two.

Q. I wish you would tell when the first explosion occurred? A. In January, 1904, we lost a press,

but that did not interrupt us very much. We were then installing another press and it was completed very soon.

Q. When did the second explosion occur? A. It occurred on the 16th of November, 1905.

Q. Did you have any other explosion at any time? A. There was another explosion in a press.

Q. I mean was there another one after that, a third one? A. Well, there were some trivial explosions.

Q. Now, then, I wish you would describe the circumstances and conditions under which the second explosions occurred? A. The second explosion was of the horizontal press. The building was destroyed, the machinery was not affected. We had to build another building and remove it. The explosion occurred at about ten minutes before one, in the middle of the day, when the machinery was not in operation. 2306

Q. During the time that you were operating this plant, I will ask you whether or not you had any communication or came in contact with a man by the name of Piatt, W. H. H. Piatt? A. Yes, sir. 2307

Q. State when and under what circumstances you first met Mr. Piatt? A. Piatt came to my office in Peoria about Decoration Day, 1904, presented a card with his name and his business representing——

Mr. Katzenbach: One moment, we object to what his card stated.

The Court: That has already been in evidence.

Mr. Abbott: But not from this witness.

The Court: No. He may show what the card stated, that is what was on the card.

Q. What did the card show? A. He represented

the du Pont Company, W. B. Dwinnell of the Advisory Counsel, Wilmington, Delaware.

Q. What transpired after that? (Objection overruled.) A. A conversation between Mr. Piatt and myself.

Q. Relate that conversation? (Objection overruled.) A. Mr. Piatt said that Mr. du Pont, knowing that he was going to call at Peoria asked him to call on me and presented Mr. du Pont's regards. I asked Mr. Piatt when he came
2309 to the city. He told me that morning. I asked him if he had ever been in the city before. No, he had never been there. He said that it was not the custom of the du Pont people to allow the employees in their offices to visit their mills and said that he would like very much to visit a powder mill and asked if he could go to my mills that day. I did not then reply to the question. I asked him if he had not been to my mills before? He told me he had not and I then told him that I knew that he had been in the city the preceding week, and that he
2310 had had a conference with Harry Paige and tried to hire him at $50 a month and $5 for each letter and a dollar for each telegram, to betray my business in shipments on the C. B. & Q. Railroad. I also knew that he had hired a man by the name of O. D. Head to do some spying and make some drawings of the machinery in my mills. I also knew that he had attempted to hire Fred Nagel, agent of the C. B. & Q. Railroad at Edwards, who did the billing of the powder shipments from the Buckeye Mills, he admitted all those things.

Mr. McCarter: We object to that.

The Court: Yes, what did he say?

Q. Say what he said when he admitted that? A.

He said he knew that he had done so. And I told him then that in reply to his request to go to my mills, to say to Mr. du Pont that I wanted to send a message to Mr. du Pont by him, and to say to Mr. du Pont that my latch string hung out and that I extended a cordial invitation to Mr. du Pont or any of the officers of the du Pont Company to come to Peoria and to be my guest, and to go to my mills and inspect them, but that I drew the line at a contemptible shyster lawyer that was engaged in the kind of business he was, Piatt. I advised him, 2312
I told him if there was any manhood in him he should stand by the profession he claimed to belong to, and not dishonor it. I told him to say to Mr. du Pont that if they did not cease hiring spies, chasing me with detectives, and hiring spies in my mills, hiring railroad agents to betray me, and furnish information of the shipments from my mills and hiring miners to refuse to use my product, that I would take him into the United States Court and shake him out, and I thought I could keep the Advisory Council pretty busy. Mr. Piatt then left the office. (Motion to strike out answer, denied). 2313

Q. Had you ever seen Mr. Piatt before this conversation which you have described? A. I saw him talking with Harry Paige.

Q. Describe the circumstances under which you saw him talking with Harry Paige? A. Well, when the conversation occurred, Harry Paige telephoned me to come down to a resort in Jefferson St. I did so, and met Paige and he and—I saw Paige, and he and Piatt went into an adjoining apartment. I heard the conversation between them. This was some three or four days before Piatt came to my office and after I had listened to the conversation, I looked at Piatt, and I recognized the man when he came into my office.

Q. Now, you referred to a man by the name of O. D. Head, whose name you gave in this conversation with Mr. Piatt. Who was Mr. O. D. Head? A. He was the agent of the Prudential Life Insurance Company at Cincinnati, one of the solicitors.

Q. Do you mean at Cincinnati? A. At Peoria.

Q. Under what circumstances did you—by the way did you yourself ever meet Mr. Head? A. I did.

Q. How extensive, so far as the black powder
2315 business in the United States was concerned, Mr. Waddell, was the business of the Buckeye Powder Company—how many states, territories and countries did it cover? A. I could define the territory better by boundaries than I could by states because we did not include full states, did not reach—we took in the western part of West Virginia, all of Ohio, Indiana, and a little of Northern Kentucky, Illinois, Iowa, Missouri, a small part of Kansas, a very little of it, Nebraska, Colorado, a small portion, and a small part of Wyoming. We sold powder in Montana and Wisconsin and Minnesota and
2316 Michigan.

Q. You sold powder in all these states that you have named? A. Iowa, yes.

Q. And you sold it in Illinois, and delivered it in these other states? A. I did.

Q. Do you know anything about how extensive the business of the du Pont Powder Company and the Hazard Powder Company and other companies was that you represented? A. Yes.

Q. How extensive was that as to territory? A. They shipped to all the states in the Central States and the Southern States and among all the Western states, practically the entire country.

Q. And in foreign countries? A. Yes.

Q. What foreign countries? A. South America, all the South American States.

Q. Mr. Waddell, I show you plaintiff's Exhibit for identification 52-W and ask you to look at that and state whether or not you know anything about that document? (Handing witness) A. I know about the document so far as the figures in type are concerned.

Q. You heard the testimony of R. S. Waddell, Jr., regarding that matter, did you? A. I did.

Q. Do you know anything about the figures in writing that are on the document, or any of them? A. I gave directions for the placing of them there. 2318

Q. What particular figure did you direct should be entered upon that document? A. The figures in black ink.

Q. Now, will you state how and under what circumstances you gave those figures and instructed that they should be marked there? (Objection overruled.) A. I was making an estimate of the damages that the Buckeye Powder Company sustained, and giving the fair and just price that should be obtained in the different districts where the—for each of the sales that were made there. (Objection overruled.) 2319

Q. Will you state how you arrived at the determination of the amounts which are set forth in the column marked cost including thirty cents profit, and freight charges? (Objection overruled.) A. I endeavored to establish and fix a fair and reasonable price at which I should have been able to have sold the powder named in this chedule of sales in the different districts—Illinois—wherever the powder was delivered, and I fixed these prices as my judgment of what would be a fair and reasonable price and that would have permitted ordinary and not exorbitant profits for Buckeye powder. I want to correct that idea there in regard to the thirty cents profit. That was merely an ap-

proximate and was put on by the young man who made up this list. That I did not authorize.

Q. Now, how do you wish to have that matter changed in order to conform with your views? (Objected to and objection sustained).

Q. Well, now then, how did you proceed to ascertain the cost of Buckeye powder which is included in the black ink? (Objection overruled.) A. I knew the cost of Buckeye powder at the mills delivered f. o. b. cars fro mmy experience in
2321 the manufacture of it, my estimates and calculations of the cost of powder. I then took into consideration the average freight for a given district, say for the state of Illinois and Indiana and after adding that to the cost of the powder I estimated what would be a fair and reasonable profit considering all of the risks and the emergencies in the powder business, and I fixed upon a reasonable and fair price and with due consideration to what others had fixed for their price.

Q. Are you able to state at this time what was
2322 the fair and reasonable price that others had fixed for their powder? (Objection sustained.)

Q. Will you state to the Court and jury the different elements that you used in making up this total figure which you have set forth as the fair price at which you should have sold Buckeye powder to the various customers which are set forth on that exhibit? A. I took into consideration the cost of the powder at the mills, based upon the raw material, labor and cost of manufacturing complete, and the cost of selling, overhead expense; then added to that the cost of freight for the reason that all powder in carloads is sold delivered, and I had to meet that requirement, because that is the general requirement of the United States, that all powder for many years has been delivered in car

loads. I added the approximate freight for a given distance and based upon my experience in the powder business for many years I regarded the price fixed fo each of the districts, each of the locations named on this sheet where powder was sold, as a reasonable and fair price at which it should be sold.

Q. Now, what in your judgment is a reasonable and fair profit or was a reasonable and fair profit for you to have made upon such powder as you sold while you were manufacturing black blasting powder during the year 1903 to 1908 inclusive? (Objection overruled. A. Approximately thirty cents, but it would be impossible to make the great variety of prices in a given locality that the addition of thirty cents to the fractional freights would make, so that it has been the custom to fix a price for a district and I follow the same rule as the custom of the country in the sale of powder and fix a price of $1.20 for the State of Illinois, which would approximately give thirty cents in every particular—the average would be thirtq." 2324

Q. Sometimes a little more and sometimes a little less. 2325

The Court: What difference would it make if you were putting it in another district?

The Witness: The additional freight.

The Court: That would be cost, wouldn't it?

Witness: That would be added to the cost and it would raise the price.

The Court: The thirty cents profit in your judgment should go on every keg?

Witness: The thirty cents—approximately thirty cents should go on every keg.

2326 Q. I will ask you to state Mr. Waddell, whether during your efforts—during your conduct of the business of the Buckeye Powder Company, during the year 1903 to 1908, what steps did you take to dispose of your product—to sell it? A. I solicited the trade personally and through the mails. I secured the services of John G. Miller as general agent at Chicago and of Mr. E. C. Burroughs as agent at St. Louis, and I have employed at different times one man perhaps at a time, representatives, who
2327 would call on the trade and others who would endeavor to induce the trade to accept our powder.

Q. How long an experience in the business did Mr. John G. Miller have? A. I think some probably ten years.

Q. How long an experience did Mr. Burroughs have? A. Burroughs had been a salesman all of his life, but not all the time in the powder but in other lines.

Q. Is Mr. Burroughs living or dead? A. He is dead.

Q. Did you have an agent by the name of Laugh-
2328 lin? A. P. P. Laughlin.

Q. How long was Laughlin engaged with you? A. With me?

Q. Yes. A. About four or five months I think.

Q. What experience had he had before he came with you? A. He had been for about twenty years General Sales Agent of the Ohio Powder Company at Youngstown, Ohio, and was with the du Pont Company when he came to me.

Mr. Waddell's examination was interrupted at this point and the deposition of Jacob E. Schoemehl, a witness for the plaintiff, was received in evidence and read to the jury.

On Direct Examination Mr. Schoemehl stated that he resided at Terre Haute, Indiana, and is the Secretary of the Frank-Prox Company; that in 1903 and 1904 he was bookkeeper for the Prox-Brinkman Manufacturing Company at said place; that the business of said company at said time was manufacturing mining machinery, coal mining machinery, and all kinds of repairing of machinery, and powder mill machinery, and in the general supply business; that that company had some correspondence with the Buckeye Powder Company located at 2330
Peoria, Illinois, which correspondence was offered by the plaintiff and received in evidence and read to the jury as follows:

12-17-03.

R. S. Waddell, Esq.,
Peoria, Ills.

Dear Sir:

Yours 15th to hand. In answer will say we cannot make you a price on the mills for a few days. 2331
But believe we will be able to do so by Jany. 1st. Trusting you will be able to wait for us until then we remain.

Yours Truly,

Herman C. Prox,
V. P.

(Memorandum in lead pencil):

(Mention my absence from city & note they desire to quote us on a mill after Jany. 1st and we will delay placing our order until we hear from them about date named.)

2332 *Jacob Schoemehl—Direct*

Peoria, Ill., Dec. 22, 1903.

The Prox & Brinkman Mfg. Co.
201-301 N. Ninth St.
Terre Haute, Indiana.

Gentlemen:

Replying to yours of the 17th inst. We note your desire to quote us on wheel mill after January 1st
2333 and we will delay our order until we hear from you about the above named date.

Our Mr. Waddell, President, is absent from the city and your letter will be referred to him on his return.

Yours truly,

Treasurer.

Terre Haute, Indiana, Jan. 9, 1904.

2334

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

We received your letter stating that you would close for your powder mill this week. In answer will say that we are very sorry but we have an arrangement with the Powder Trust preventing our making machines at present. We expected, when we wrote you sometime ago, that this contract would be annuled but owing to delays it has not been closed. We believe that we will be able to close it before the 15th one way or the other and if you could we would like for you to wait on us that long, if not, we will have to let the matter drop.

Thanking you for the inquiry and hoping to hear from you, we remain

Yours truly

The Prox & Brinkman Mfg. Co.,
Herman C. Prox
H. C. P. V. P. & G. M.

The direct examination continued as follows:

2336

Q. In the copy of the letter which has just been offered in evidence dated January 9th, 1904, you refer to an arrangement which you had with the Powder Trust preventing your making machines at present. Will you state whether or not that arrangement was in writing or not? A. It was typewritten and signed in ink by the principals.

Q. Have you got the original contract to which you refer? A. Yes, sir.

Witness produced a document and was asked to state whether this constituted "the arrangement" which he referred to in the letter dated January 9th, 2337
1904, to which he replied:

"A. That is the contract that was referred to—the agreement."

Said document received in evidence as plaintiff's Exhibit 155 and read to the jury as follows:

AGREEMENT.

This agreement made and entered into by and between the Prox & Brinkman Manufacturing Co., of Terre Haute, Ind., first part, and the Indiana Powder Co., parties of the second part, witnesseth:

FIRST. The party of the first part, their heirs

or assigns, in consideration of certain obligations to be hereinafter stipulated by the parties of the second part, agree that they will not enter into the business or engage themselves in business in any way, shape or manner in the manufacture of machinery for the manufacture of explosives, black powder, or dynamite, for a period of five years from the signing of this agreement, unless it is agreed to by the Indiana Powder Company, its heirs or assigns and permission granted by the Indiana
2339 Powder Company, its heirs or assigns for such machinery to be manufactured, and in the event of the Indiana Powder Company, its heirs or assigns wishing said machinery to be manufactured, the same shall be granted by written permission from the Indiana Powder Company, its heirs or assigns, in consideration of the above the Indiana Powder Company.

SECOND. In consideration of the above the Indiana Powder Company agrees to give Prox &
2340 Brinkman $5,000.00 per year worth of work in repairs and new construction, as designated by the Indiana Powder Company, its heirs or assigns, and in the event of the Indiana Powder Company, its heirs or assigns not securing for them the required $5,000.00 worth of work per year, they will pay them for any deficiency a sum of 20% on the $1.00 as their profit in lieu of not furnishing them with the $5,000.00 worth of work. It being understood and agreed by both parties whose signatures are herewith attached, that in the event of the amount of work falling short in one year and running over the following year, that it shall be taken from the 20% which has been paid in cash, if any. However, if the Prox & Brinkman Company should manufacture and repair to the amount of more than $5,000.00 or over $25,000.00 worth of work during

the five years, the excess shall not be considered by the Indiana Powder Company, but it shall pay full prices for anything over the excess of $5,000.00 during the five years.

It is understood and agreed by both parties hereto that they are doing certain work for Mr. A. G. Cummings, of Joplin, Mo., for which they have a contract with him and that his contract is to be filled and after the fulfillment of this contract there shall be no other contract taken or any machinery manufactured except upon written orders from 2342
the Indiana Powder Company, its heirs or assigns.

Signed and entered into this the 3rd day of June, 1902.

THE PROX & BRINKMAN MFG. CO.,
Frank Prox., Pres.

Attest:

GEO L. ROOD, Secty.,
Indiana Powder Co.,
by J. Smith Talley, Pres.

[SEAL]

2343

On cross examination the witness stated that some time in December, (the dates being given in the foregoing letters), Mr. Waddell applied for some machinery, the matter was delayed for two or three weeks and it was then furnished to him.

On re-direct examination the witness identified certain correspondence between G. A. Maddox, Assistant Vice President of the E. I. DuPont Company, Wilmington, Delaware, and the Prox-Brinkman Manufacturing Company, which were offered by the plaintiff and received in evidence and read to the jury as follows:

E. I. du Pont de Nemours & Co.,
Wilmington, Delaware.

July 21st, 1903.

Operating Department.
Messrs. Prox & Brinkman,
Terre Haute, Indiana.

Gentlemen:

In understand there is some money yet due by
2345 the Northwestern Powder Co to your firm which debt was contracted during the construction of the mill when it was owned by Mr. Keller. There seems to be some uncertainty as to the amount. I would be very glad if you get that straightened out. It is the wish of the present management to close up all old bills and get all matters entirely straight. I am sure you will be glad to hear this and will do all you can to help by itemizing the bill, thereby straightening up this matter.

Yours very truly,
G. A. Maddox,
2346 H-GAM Asst. to Vice President.

E. I. du Pont Company,
Wilmington, Delaware.

December 30, 1903.

Operating Department.
Mr. Herman C. Prox, Vice President,
Prox & Brinkman Manufacturing Co.,
Terre Houte, Indiana.

Dear Sir:

I have just gotten back from a trip and find your letter of December 18th, asking that your invoice of June 3rd, due on contract between Indiana Powder Co. and Prox & Brinkman Manufacturing Co. be paid at once.

In the first place, there was a question whether or not you would allow us to apply purchases of the Northwestern Powder Co. to the contract, which question you answered on November 2nd, stating that you did not think the Northwestern purchases should be applied to the Indiana contract, but that beginning with December, 1903 we could so apply all further purchases for the Northwestern, but that they must be purchased in the name of the Indiana Powder Co. Of course, we know that the Indiana Powder Company, under the contract, has a right 2348
to purchase powder machinery from your Company and send it where they please and sell it to whom they please; be assured Mr. Prox, we did not have to have you suggest that method of getting machinery for the Northwestern Plant and applying it to the contract.

I am very much surprised that in your letter of December 18th you say, "We wish to state that we wrote you that Northwestern Powder Company's orders might be purchased under the name of the Indiana Powder Co., but we find that this would not be 2349
in accordance to contract, and we will handle same as written only, and the Northwestern or any other of your Companies work must not be credited against this contract.

Now Mr. Prox, the Indiana Powder Co.'s contract binds them to give Prox & Brinkman $5,000.00 per year worth of work in repairs and new construction, as designated by the Indiana Powder Co., its heirs or assigns and in the event of the Indiana Powder Co., its heirs or assigns not securing for them the requested $5,000 worth of work per year they will pay them for any deficiency a sum of 20% on the dollar in lieu of not furnishing them $5,000 worth of work.

Please note Mr. Prox, we merely agree to give or secure $500 worth of work for your Company, as

indicated by the Indiana Powder Company or pay a certain forfeit if we fail to do so. Now where in the contract is it said that only materials and work used at the Fontanet Plant shall be applied *to this contract.* Please advise me whether you will not recall your letter of the 18th and let your letter of November 2nd stand as written.

Again, our Auditing Department's records show payments between June 3d, 1902 and June 3, 1903, as follows:

2351

	June 12th	4287	70.01
	Aug. 25th	4404	68.77
	Aug. 12th	4476	54.09
	Aug. 16th	4561	87.95
	Aug. 17th	4626	265.39
	Oct. 17th	4718	63.16
1903	Jan. 11th	4802	50.17
	Dec. 19th	4888	131.16
	Jan. 17th	4980	209.38
	Feb. 17th	5060	17.42
	Mar. 13th	5131	30.75
2352	Apr. 11th	5218	174.48
	May	5293	28.19
			$1250.92

whereas your bill indicated that we paid you only $1211.58.

Our Auditing records would make us owe you on the Indiana contract $749.82, whereas your bill calls for payment $757.68. You will, therefore, itemize the dates and amounts which we paid between these dates, that we may determine which accounting Department is correct.

Believe Me Mr. Prox, we are able and willing to pay our debts and keep our contracts.

Personally I do not consider the contract between the Indiana Powder Company and the Prox & Brinkman Manufacturing Co. beneficial to the Powder Co., however, this is not the question. The Powder Company made the contract with you in good faith and will keep it both in letter and in spirit, so long as you act in good faith.

Hoping that you will give me an itemized statement showing dates and amounts paid you between June 3, 1902 and June 3, 1903, and further reply 2354
that we may buy in the name of the Indiana Powder Company and ship where we please, I remain,

Your truly,

G. A. Maddox,
Ass't. to Vice President.

Dic. GAM
AD.

E. I. du Pont Company, 2355
Wilmington, Delaware,

Operating Department. January 8, 1904.

Mr. Herman C. Prox, Vice Pres. & General Manager
Prox & Brinkman Manufacturing Co.,

201 North 9th Street,
Terre Haute, Indiana.

Dear Sir:

I note in your letter of January 5th, 1904, addressed to me, that you offer to cancel contract signed and entered into June 3d, 1902, by and be-

tween the Prox & Brinkman Manufacturing Company, party of the first part and the Indiana Powder Company, party of the second part, concerning the manufacture of Powder making machinery, etc. I do hereby accept your offer to cancel same.

I now understand that the contract shall be treated in every respect as if same had never been made between the parties.

Yours truly,

2357

G. A. Maddox,
Ass't to Vice President.

Dic. GAM
AD.

E. I. du Pont Company,
Wilmington, Delaware.

Operating Department. January 14,1904.

2358 Mr. Herman C. Prox, V. P. & Gen'l. Mgr.
Prox & Brinkman Mfg. Co.,
Terre Haute, Indiana.

Dear Sir:

I note in your letter of January 11th, addressed to me, that you accept my offer to cancel the contract entered into June 3d, 1902, by and between the Prox & Brinkman Maunfacturing Company, party of the second part, concerning the manufacture of powder making machiney. Said acceptance to date from January 11th. I write this letter merely to let you know that I have gotten your letter with the date of your acceptance, so that we may thoroughly understand each other in the mat-

ter. The aforesaid contract is, therefore, by mutual agreement between us declared null and void, and of no effect after January 11th, 1904.

Very truly,

G. A. Maddox,
Ass't. to Vice-President.

Dic. GAM.
AD.

2360

Terre Haute, Ind., Jan. 16, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your favor of the 13th to hand. In answer will say that before you order a mill we want to make you prices and are in position now to build the mill as we have been released from our Trust contract.

2361

Yours truly,

The Prox & Brinkman Mfg. Co.
Herman C. Prox,
V. P. & G. M.

H. C. P.

2362 *R. S. Waddell—Direct*

Thereupon Mr. Waddell resumed the stand and continued his testimony as follows:

Q. Mr. Waddell, in order to clear up the situation, will you state what you did with reference to making an application to Prox. Brinkman—for machinery? A. I made personal application to Mr. Herman Prox, during the year, 1903.

Q. About what time was that? A. About July or August, 1903, the first time. I saw him twice
2363 and endeavored to buy machinery and failed. I wrote him a letter, two or three letters for the same purpose. (Objection overruled.)

Q. Now, you recall what was the result of your first application; did you get the machinery? A. I didn't.

Q. Did he give you any reasons why he wouldn't let you have the machinery?

Mr. Katzenbach: Well, that is objected to.

2364 The Court: I will allow the statement of fact, whether he gave any reasons or not, not what the reasons were at this time?

A. Yes.

Q. Now, what were those reasons? (Objection overruled.) A. Gave us a reason that he was under a contract with the Powder Trust not to make machinery for outsiders.

Q. Now, when you made the second application to him that you speak of, did he give you any reason why—— A. Gave me the same reason.

Q. Each of the subsequent applications that you made—what answer did you get? A. Gave me the same reasons until afterwards he made me a proposition, after——

Q. When was it that he made you the proposition? A. January, 1904.

Q. Was that proposition in writing? A. He wrote me, yes.

Q. Have you got the letter? A. I think I gave that letter to the Government.

Q. I show you Government's Exhibit 42 of Vol. 1 of exhibits of the Government's case and ask you to look at it and state whether or not that is the document you have referred to—or rather whether that has any relation to the document you have 2366
referred to? A. That is a copy of the letter I gave the Government.

(Letter referred to received in evidence and read to the jury, the same being a letter dated Terre Haute, Indiana, Jan. 9, 1904, addressed to the Buckeye Powder Company, Peoria, Ill., and signed by Prox-Brinkman Mfg. Co. by Herman G. Prox, V. P. & G. M. The same is set forth in full, supra, page 778.)

Q. Will you describe just briefly how the City of 2367
Peoria was located with reference to railroad facilities at the time that the Buckeye Powder Company did business under your management from 1903 to 1908? (Objection overruled.) A. Peoria is the second city of the state, 150 miles from Chicago. It has twelve railroads—all of the leading trunk lines of that section of the country pass through it, and it was the most desirable distributing point.

Q. Now at the time when you began business, what if any situation obtained with reference to freight rates on powder which was subsequently was changed? A. When I took an option on the land I did it for the purpose of ascertaining what basis of freight rates could be established from Peoria. I went to Chicago to the C. B. & Q. Rail-

road and the freight rates then in force were prohibitive and I asked the C. B. & Q. to give me a line of rates that would put me on an equality with the Mooar, Iowa, mills of the du Ponts. I knew their rates of freight and I wanted to be placed on an equal basis with the du Pont Company.

Q. What was the result of those negotiations with the railroad company? A. Their rates were very greatly reduced and a complete system of
2369 commodity rates was put in force by the C. B. & Q. in conjunction with all the other railroads, centering at Peoria which placed me on an equality with the other powder companies and made a very great reduction in the rates.

Q. I wish you would describe as briefly as you can, and in your own way the location of Peoria with reference to coal production in that country and the coal mines. A. It was located well to the north of the Illinois coal field. My choice of that location was because of the fact that the southern part of the State already contained two powder
2370 mills while there were none in the northern part. It was very convenient to the Iowa coal fields, shipments could readily be made from Peoria and the Northwest through to Montana on an equal basis with the Iowa mills, and I also could reach the southern part of the State and the coal fields of Michigan, having an advantage somewhat over the mills in the southern part of the State. A large volume of trade tributary to Peoria.

Q. Do you know how many pounds of powder it takes to mine a ton of coal?

Mr. Katzenbach: Well——

Q. I will put it—if counsel want to object—I will ask the witness if he knows how much powder it takes to mine a ton of coal.

Mr. Katzenbach: I think it would require some qualifications of this witness as a miner and particularly there is a great deal of difference in coal——

The Court: Do you want to ask him? Oh, yes, it varies without a doubt.

Mr. Katzenbach: ——and a very considerable difference in powder.

The Court: If he has any knowledge upon the subject Mr. Abbott.

2372

Q. I will ask him. Mr. Waddell, have you any knowledge of the amount of powder it takes to produce a given quantity of coal? A. Yes.

Q. Now state how you obtained that knowledge? A. From experience in the coal business, and from the statistics of the State of Illinois published from year to year and from my knowledge of the powder business.

Q. What are those statistics published, in what form? A. In the form of state reports of the coal mining industry.

2373

Q. Now, what else was it that you—— A. And from my knowledge of the powder business in its application to the mining of coal.

Q. Have you information acquired in the manner in which you have indicated as to the amount of coal that was produced in Illinois during the years 1903 to 1908. A. Yes.

Q. Per year. Can you give that information from memory? A. In 1903 the production of coal in Illinois was about 36,000,000; in 1908 about 54,000,000 tons of coal.

Q. Now how much powder does it take to produce a ton of coal in the State of Illinois? (Objected to and objection overruled.) A. In hand mining, that is shooting off the solid, the average for the State of Illinois is about a pound of powder to a

ton of coal. In machine mining it varies from eighty tons to one hundred tons to a keg of powder —twenty-five pounds of powder—some little over three tons to a pound of powder.

Q. At the time when you began business of the Buckeye Powder Company I will ask you to state whether you know if the amount of coal produced in the State of Illinois was increasing or decreasing? A. Constantly increasing.

2375 Mr. McCarter: I object.

The Court: He has already testified of an increase in five years without objection. I think it is competent. I will allow it. We hope there is a development, there is a constant increase in the production.

Q. I will ask you to state whether—if you know whether—there was at the time when you began the business of the Buckeye Powder Company, a sufficient amount of powder produced in the district which you expected to serve from your plant
2376 to supply the numerous requirements for the increase in the production of coal. (Objection sustained.)

Q. Have you any information on the subject as to whether there was sufficient powder produced within the district which I have indicated to keep pace with the production of coal? A. Yes; I have information.

Q. Will you state what that is—— Well, where did you acquire that information, how did you acquire it? A. While I was general sales agent for the du Pont people, the du Pont company.

Q. And in your work on behalf of that company, how did you ascertain this fact which you have stated that you knew? A. During the entire summer and well into the fall of 1902 the du Pont com-

pany was over sixty days to three months behind in filling its orders. There was a great dearth of powder in the west. We shipped powder from the Brandywine Mills of Wilmington, Delaware, from the Wapwallopen Mills of Pennsylvania to satisfy the extra demand for powder in Illinois—they couldn't fill their orders.

Q. What was the excess in tons of coal in the State of Illinois for which there was no immediate supply of powder at the time when your plant went into operation? 2378

By Mr. Katzenbach:

Q. Mr. Waddell, do you know as a matter of fact in 1902 that the entire anthracite coal regions were shut down? A. No.

Q. By a strike in the anthracite district? A. A part of that time.

Q. For a long period of time? A. A part of that time, yes.

Q. Now, was not that the cause of the abnormal demand then for powder in the Illinois coal fields? 2379
A. No; I don't think that caused it.

Q. You don't think it influenced it at all? A. No, not in Illinois; that was bituminous coal.

Q. Then you don't think that the shutting down of the anthracite coal mines increased the production of coal in the bituminous coal fields? A. Not in Illinois; it may have done so in Pennsylvania, not in Illinois.

Mr. Abbott: I don't think this is qualifying the witness.

The Court: No.

By Mr. Abbott:

Q. Now what was the excess in tons of coal in the State of Illinois for which there was no immediate supply of powder at the time when your plant went into operation? A. There was an increase every year in the amount of powder demanded to mine the increased amount of coal produced that would have required at least $250,000 kegs additional to take care of the new trade.

2381 Q. About the time that you entered—about the time your mills began to do business, what was the situation in that district with reference to other companies selling powder? Were there other companies selling powder at Peoria or elsewhere? A. There was quite a number of agencies at Peoria.

Q. Will you state how many agencies there were at Peoria at that time when you located your mills there? A. There was the du Pont agency with Chas. J. Off & Company, the Phoenix agency with Dooley Brothers, the Hazard agency with Oakford & Fahnestock, the King agency with Walker Hard-

2382 ware Company, the Laflin & Rand agency with the Peoria Fuel Company, and the American agency,—I have forgotten the name of the American agency.

Q. Now, what, if any, change was there in that situation with respect to agencies which occurred about the time that your mills began business? (Objection overruled.) A. The change occurred during the building of my mills, about June or July, 1903.

Q. What was that change? A. All of the agencies in Peoria were withdrawn except the du Pont agency.

Q. Now, into whose hands was the du Pont agency placed at that time, if you know? A. It was made a double agency,—Charles J. Off & Company and Dooley Brothers were agents.

Q. Now, what do you know about any steps that were taken at that time to concentrate the business of the various companies that had transferred business in Peoria before, separately?

Mr. Katzenbach: This is all—of course you understand of his own knowledge.

The Court: Yes, of course, it must be.

A. Only what I observed from the withdrawal of agencies and centralizing them.

2384

Q. Can you state about as near as—will you state as near as you can about the date when you observed this consolidation of agencies and the withdrawal of agencies as you remember? A. About June, 1903.

Q. Has there ever been any change in that situation—was there any change from 1903 down to 1908? A. No.

Q. Do you know anything about the firm of Dooley Brothers at the present time? A. Yes.

Q. Do you know anything about a committee named or called "The Peoria Committee"? A. Only by hearsay.

2385

Q. From whom did you obtain any information upon that subject?

Mr. Katzenbach: That is objected to as immaterial.

Mr. Abbott: If he says it is upon hearsay, Your Honor, I would like to find out what he means by "hearsay."

The Court: Very well, I will let you do that.

Q. What do you mean by "hearsay," Mr. Waddell, in that connection? A. I read it in the minutes.

Q. In what minutes did you read it? A. The Lent minutes of the Association.

Q. Before that you didn't know the name of this Committee? A. No.

Q. During the progress of your efforts to secure business did you at any time come in contact with the miners in your district? A. Yes, I have.

Q. What, if anything, did the miners have to do with the purchase of powder? A. They were in position to control it.

2387 Q. Did you at any time during your experience in connection with the Buckeye Powder Company come in contact with any agreements which were used by the coal operators and the American United Mine Owners? A. I did.

Q. Now will you state what your experience and knowledge is—and was during that period—concerning agreements which existed between the coal operators and the United Mine Workers of America? (Objection overruled.) A. I did know of them—do you want to know what my experience

2388 was?

Q. Yes. A. I was present as a visitor in the convention; biennial conventions were held between operators and miners. I was familiar with the discussions of the terms and agreements and had discussed the question of the agreements with the members of what was known as the price committee and the scale committee.

Q. In that connection was your attention ever called to such agreements as were in use between the operators and the mine owners—the agreements which you have just testified to? A. Yes, I have just received the printed copies both from the operators and the miners.

Q. I show you exhibits P 1158-9-60-61, and ask you to look at them and state whether or not you

recognize these documents as having any relation to the agreements which you have just testified to? A. Yes, these are the agreements that were in use by the miners and the operators.

Q. Did you at any time have any knowledge of anything that was done by the miners or operators under any of these agreements with reference to the purchase of blasting powder? A. Yes, that question arose very frequently.

Q. Well, now, state what you know of that matter? (Objection overruled.) A. The miners bought 2390
their powder from the operators at an agreed price of $1.75 a keg and they had the right to demand the brand of powder that they desired.

Q. I will ask you, Mr. Waddell, whether or not you know of anything else that was done by the miners with reference to the purchase of black blasting powder, and whether any of those miners ever did, so far as you know, exercise their right as you have stated it to be, to select the grade of powder which they desired to use? A. Yes, on a number of occasions.

Q. Now I wish that you would tell the Court and 2391
the jury what you know, in a general way, and as specifically as you can, with reference to any demands or any influence which was used by the miners upon the operators affecting such trade as the Buckeye Powder Company had for black blasting powder with any of the coal operators?

A. Yes.

Q. Well, now then, will you proceed to explain what you know with regard to those matters? A. I know that the Clark Coal & Coke Company, Mr. Horace Clark, president, was a stockholder in the Buckeye Powder Company and desired to use Buckeye Powder in his mines. I went in to the mines myself and witnessed the shooting of the powder

and the test of the powders in comparison with du Pont and Buckeye. I saw the results of the shooting. The miners, independent of the results they obtained, decided they would not use Buckeye Powder.

By Mr. Katzenbach:

Q. Were you there when they made the decision? A. I was in the room downstairs right under them
2393 when they announced what thei rdecision was. (Motion to strike out overruled.)

By Mr. Abbott:

Q. Now proceed and relate the circumstances? A. Same particulars occurred.

Q. Is that all that occurred at the Clark Coal & Coke Company's property? A. The Buckeye Powder was ruled out of the mine, the Clark Coal & Coke Company used about 22,000 kegs per year in their two mines, and we lost the business.

2394 Q. Did I understand you to say that the Clark Coal & Coke Company was interested in the Buckeye Powder Company? A. Horace Clark, the president of the company, was a stockholder in the powder company, yes.

Q. Any other instance that you know of personally? A. Yes, similar conditions were obtained at the mines of the Maplewood Coal Company.

Mr. McCarter: Object.

The Court (to the witness): You must not say "similar." You must give the exact conditions by stating them.

A. Messrs. McElwee & Ditewig, owners of the Maplewood Coal Company, were stockholders in

the Buckeye Powder Company; they desired to use our powders in their mine.

Mr. McCarter: That must be hearsay.

Mr. Abbott: I hardly think that comes within the class of hearsay——

The Court: In what way did they manifest their desire, let us hear that.

The Witness: They asked me to ship the powder to them and expressed their desire. (After interruption and argument, continuing) Maplewood Coal Company ordered a number of shipments—— 2396

The Court: How did they order them?

The Witness: Part of them verbally, part of them by telephone, some of them were given to me while I was at their mine. I was told to ship and I did ship.

Q. Now, what was the result so far as the continuation of the use of Buckeye Powder at the Maplewood Coal Company's mine is concerned?

2397

A. There is a Pit Committee in every mine, and this Pit Committee voices the result of the vote of the miners on any topic, or if the vote is not taken the Pit Committee decide themselves, unless there be a protest. I have attended their meetings where these questions have been determined and I have also met the Pit Committee in a great many mines where the questions have been raised. The Pit Committee at the Maplewood Mines in my presence notified Mr. McElwee that they would not have Buckeye powder and demanded du Pont. (Motion to strike all after "protest" overruled.)

Q. Now, did you or did you not continue to make sales to the McElwee & Ditewig, or to the Maplewood Coal Company? A. I didn't.

Q. Did you ever have any further conversations with either of those gentlemen or any officer of the Maplewood Coal Company with reference to Buckeye powder? A. Oh, I frequently solicited the business.

Q. Did you at any time ever have any conversation with Mr. Clark as representing the Clark Coal & Coke Company with reference to the purchase of black blasting powder after this experience which you have testified to? A. Quite frequently.

2399 Q. Did you at any time ever succeed in selling him black blasting powder? A. No.

Q. Now, can you, of your own knowledge, state any other circumstance or experience which you had with the miners with respect to the use of Buckeye powder? A. Yes, I met the miners, or the Pitt Committee, at various places.

Q. Well now, name some other place and time when you met the miners and the Pit Committees on the subject of Buckeye powder? A. I met the Pit Committees at Edwards, the station from which
2400 our powder was shipped; William Kinglush and two other gentlemen there. They were the Pit Committee from Howarth & Taylor's mines.

Q. How many miners were employed in Howarth & Taylor's mines? A. Some eighty to one hundred and twenty-five.

Q. About how many kegs of powder did that mine consume per annum?

Mr. Katzenbach: How does he know?

Q. How do you know? A. Between six and eight thousand, depending——

The Court (to the witness): Have you any knowledge upon this subject yourself?

Witness: Yes.

By Mr. Katzenbach:

Q. Where did you get your knowledge? A. General knowledge of the mining business—a miner uses from six to seven kegs of powder per month—each miner—it depends upon the length of operation of each coal mine, about the quantity of powder they use.

Q. How do you know how many miners Howarth & Taylor had; how do you know that, Mr. Waddell? A. I knew the local Union there in Edwards; 2402
knew all the men employed—a great many of them during their idle times in the coal mines I employed them in the powder mills—very familiar with them—knew most of them personally. I took the train at Edwards, going and coming.

By Mr. Abbott:

Q. How far was this mine located from your mills, Mr. Waddell? A. About a mile.

Q. How often did you see the mines? A. About twice a week for a number of years. 2403

Q. How often did you see the owner of the mines? A. Oh, it would average perhaps once a week.

Q. Now state what conversation or experience that you had with this Pit Committee that you were just referring to? (Objection overruled.) A. The demand of the Pit Committee on me or proposition that they meet me?

Q. State what that proposition was.

The Court: One moment—not a general proposition. I assume that this was a case like before, where they refused to take the powder.

2404 *R. S. Waddell—Direct*

Mr. Abbott: Well, I don't want to get this out through any misunderstanding, this relates to——

The Court: Everything that the Pit Committee said to him, wouldn't it?

Mr. Abbott: No.

Q. I will ask you whether this proposition had any reference whatever to the use of Buckeye powder in Howarth & Taylor's mines? A. Yes.

2405

Mr. Abbott: Now, I think, if your Honor please, we have a right to have him state——

The Court: Not everything, even at that. I will allow you to show that the Pit Committee after using their powder declined to use it any further.

Q. Well, did you make any sales of Buckeye powder to Howarth & Taylor's mines at any time? A. I did; quite a quantity.

Q. Did you at any time after that cease to make
2406 sales of Buckeye powder to Howarth & Taylor's mines? A. I lost the business.

Q. Now, will you state whether or not you ceased to sell powder to Howarth & Taylor on or about the time that this conversation occurred? A. Yes.

Q. Now, state what the conversation was? (Objection sustained.)

Q. State what, if any proposition was made to you at that time having any reference to the use of the Buckeye powder and to the continued use of Buckeye powder in the Howarth & Taylor mines? (Objection sustained.)

Q. Mr. Waddell, do you know what has become of Mr. Kingbush, the member of the Pitt Committee which you stated you had conversation with? A. I do not know where he is, I searched for him, I heard

that he was dead, but I do not know definitely, I could not get any trace of him.

Q. Do you know who the other persons were at that time members of the Pitt Committee? A. I had their names, and I searched for them, I hunted for them all over the country. Miners changes from one locality to another, and it is very difficult to trace them.

Q. There were three men took part in this conversation, in this conversation that you have referred to? A. Three members. 2408

Q. Do you know of your own knowledge, Mr. Waddell, of methods that were used at any time by manufacturers of black blasting powder with miners to induce them to reject certain grades of powder and recommend other grades of powder, I am inquiring now of your experience from the time when you entered the employ of the Hazard Powder Company down to the present time. Objection sustained.)

Q. Did you have any knowledge, Mr. Waddell, —your own personal knowledge,—while employed by the Hazard Powder Company or the du Pont 2409 Powder Company or any of the interests that were represented by either of those companies, regarding the employment of miners or inducements which were used through miners, to cause them to recommend one grade or one make of powder and to reject another grade or make of powder? A. My knowledge of that would have to come through other people there, other than my own. I never bought a miner personally. (Motion to strike out denied.)

Q. You say that your information in that regard must come from others. What others do you have in mind from whom you obtained such information? (Objection sustained.)

Q. Did you at any time have any conversation

or get any information from any person connected with the Hazard Powder Company or du Pont Powder Company or any other company which you represented while you were in the employ of either of those companies, concerning the employment of miners or the methods used in inducing miners to recommend one grade or make of powder and to reject another grade or make? (Objection sustained).

Q. Do you know anything about the system
2411 known as the "trade report system," in use by the defendants? A. Yes.

Q. State what you know—describe your knowledge of the system, how it originated and what the purpose of it was. A. The system was originated in the dynamite branch of the powder trust, and I was sent by Eugene duPont and Mr. Alexis I. duPont, who was vice president of the dynamite interests to investigate the trade reports system introduced by Mr. Haskell in the dynamite interests for the purpose of ascertaining whether it was
2412 suitable to use and whether I would recommend it for the black powder interests. I was sent to Mr. Kerr.

Q. When was this that you were sent on this mission? A. I should think about 1899 or 1900; I have forgotten the exact date.

Q. Now, did you investigate their system at that time? A. Mr. Kerr had been instructed by Mr. Alexis I. duPont, vice president of his company, to give me the fullest information in regard to it. He showed me the system of reporting, and the reports they gathered in, the nature of the reports. How they obtained information from their agents and travellers—salesmen—and then disseminated the information to the branch offices or their salesmen who might be interested in other information that had come to them through other sources.

Q. State how they disseminated this information. A. It was sent out by the trade bureau.

Q. Proceed, Mr. Waddell. A. Information that would come from one salesman that would interest another department or another office would be sent to that office, giving the nature of the information. I reported to Mr. duPont after I had examined the system thoroughly that I would not recommend a spying system of that description for use in the black powder business, and we did not adopt it.

Q. Now concerning—you testified the other day 2414
regarding certain conversations that you had had with employees of the railroad companies. I will ask you to state whether or not at any time you caused or instituted an investigation into the reasons why information was being given out concerning shipments from your mills in advance of those shipments being received by the consignees? (Objection sustained.)

Q. Mr. Waddell, will you state whether it is or is not true that information was given out concerning shipments that were made from the Buckeye mills previous to the time of those shipments 2415
being received by consignees? (Objection sustained.)

Q. Mr. Waddell, during the carrying on of your business between 1903 and 1908 did you at any time make any shipment to any consignee wherein advice of that shipment reached you from some other source than the consignee before he had received the information? (Objection overruled.) A. Yes.

Q. Can you at this time state the names of some of the persons from whom you received such advices? (Objection overruled.) A. From Bruce and Burdick, Joliet, Illinois; from Applegate & Lewis, Huber, Illinois; from John G. Miller, Chi-

cago; from Northwestern Coal & Mining Company, Devere, Missouri. That is all I recall just at present.

Q. Now did you at any time make any investigation——

The Court: Hold on, that is not complete yet. As I understand these are the persons from whom advice was received.

Mr. Abbott: Yes.

2417 The Court: All right, how about what?

Q. Now, what did they advise you?

The Court: Not what they advised him; about what? You are talking about shipments that left his plant to certain customers, as I understand your question?

Mr. Abbott: Yes.

The Court: Concerning which shipment advices were received from other persons before the consignee knew of the shipment?

2418

Q. Well now then what other persons did these customers advise you they had received those advices from?

Mr. Katzenbach: We object to that; that is asking this witness to detail the substance of a conversation had with some one, not mentioning whom, with some one else, not mentioning whom.

The Court: Read the question.

(Question repeated.)

The Court: No; that will not do. You see what this witness has done is to give the names of the consignees.

Mr. Abbott: Yes.

The Court: That is not——

Mr. Abbott: If we show, if your Honor please that—if we show that these consignees received these advices from the defendants or the representatives of these defendants, are not we then entitled——

The Court: No, you see, I took it to be that your purpose was to show this: That consignments were made by this Buckeye concern to certain of their customers, that advices were received of those consignments, 2420
received by the Buckeye people from sources other than the customers before those customers could have known of the consignment. This does not do it. Now what you have done, you have mentioned the names of consignees and your present purpose is to tell what those consignees heard from somebody else.

Mr. Abbott: If we can show though, your Honor, that that information came from these defendants, then we have a right to 2421
show, have we not, that this witness made an investigation and ascertained how these defendants got that information? That is all we are leading up to.

The Court: In the first place you haven't shown that these defendants had the information.

Mr. Abbott: I beg pardon?

The Court: You haven't shown that the defendants had that information.

Mr. Abbott: I know, but we can't show it all at once; we have tried to go at it in a more direct way and have not been permitted to do that. We have gone the other way. We have shown that the consignees got this

information. Now I think that we ought to be permitted to show from whom they got it—at least to connect them up with the defendants in this case and then find out how the defendants got this information. That leads to the investigation and the results of it.

The Court: Step by step I am not prepared to say that some part of your offer ought not to be received. Show first then
2423 that the consignees to whom these shipments were made could not have received information from the Buckeye people at the time they reported knowledge of the consignments?

Q. I will ask you Mr. Waddell, to state whether in these particular instances that you have named any of those parties could have received information from the Buckeye Company or any of its representatives concerning those shipments at the time when they had knowledge of those shipments. (Objection overruled.) A. No.

2424 Q. Now did you——

The Court: Now then, you had better fill that out. Why couldn't they have known

Q. Well now why—— (Objection overruled.) A. Because our shipments—shipments from Buckeye mills made on any date—any day—were billed out that day and the bills of lading and advices of the shipment were mailed to us that night from Edwards, Illinois, to the Peoria office of the Buckeye Powder Company and reached us the following day. The earliest advices the Buckeye Company at its office in Peoria had of the shipments was the day following. I have received from the consignees advices before I received it from the

mills or from the shipment office, that they had learned that a shipment—giving the definite car number and all the details—had been made from the Buckeye mills the preceding day and I didn't know it myself.

The Court (to the Witness): From which source would the consignee get notice of the shipment, the mills or the Peoria office?

Witness: From the Peoria office only; they did all the billing. 2426

The Court: All right.

Mr. Abbott: Now I think if your Honor please we are up to the point where we can ask this witness the question as to what caused an investigation to be made as to how that information got out.

The Court: Of course, you may now show how it occurred provided he don't tell as the result of his investigation matters which are in hearsay.

Mr. Abbott: Yes; I don't know whether we will get to the point where we will be stopped on that, but I—— 2427

The Court: You ought to know at this time whether you will come within his inhibition of mine and if it does, don't attempt it.

Mr. Abbott: The point that I make your Honor is this: I don't want to go counter to any ruling that your honor makes. I am trying very hard and of course it is very difficult in this case to always keep within the line. But my theory is this, and I will explain the theory of this particular examination. The only way in which we can show how this witness knew where that information came from is to show that he

caused a certain investigation to be made with railway officials, to show what he ascertained from railway officials as to the means used and the methods which were used, through the railway company and its employees, for giving out that information.

The Court: If you can't do it——

Mr. Abbott: If we can't do that then I don't wish to go that far.

The Court: You can't do that, because that
2429 depends don't you see upon the accuracy and the truthfulness of somebody else other than this witness.

Mr. Abbott: Well, I won't then undertake at this time if your Honor please, to go into that matter any further, because I feel that it wouldn't be worth while, but I will make at this time the offer that——

The Court: You may make your general offer and take your exception without going into the details. That is sufficient.

To which ruling of the Court the plain-
2430 tiff's counsel the nand there excepted and said exception was allowed.

Q. Concerning the matter of prices, Mr. Waddell, I want to ask you a few questions there: What method did you follow during the years 1903 to 1908 in order to ascertain what were the ruling prices for black blasting powder with which you had to compete? A. The only prices that I know anything about were the prices that I had when I left Wilmington, Delaware, and were established

by the Powder Association on the 19th of December, 1902. $1.35 east of the Mississippi River—$1.45 west of the Mississippi River.

Q. Between that time and the time of the issuance of the first price list, what information—how did you acquire your information regarding prices? A. I was wholly in the dark in regard to it. Any changes that might have been made by the associated companies, any increase of rebates on their contracts, I knew nothing about except as I would get it in contact with the trade. 2432

Q. Do you know of any instance of your own knowledge where any customer of yours was induced to leave you by reason of any less price which was offered to him than prices which you had offered? (Objection overruled.) A. Yes.

Q. Will you state those instances? A. I lost the trade of Charles F. Keeler, a stockholder in Buckeye, on account of cut prices made by the du Pont Company.

The Court: (To the Witness.) How do you know that, without going any further. 2433

A. Mr. Keeler sent the du Pont letters to me quoting lower prices and asking me to meet them, from time to time.

Motion to strike answer out denied, with leave to renew if not connected.

Q. Have you got those letters? A. I gave them to the Government.

Q. Do you know of any other case of your own personal knowledge where you lost a customer by reason of a cut in price? A. Yes, sir.

Q. Will you name that person? (Objection overruled.) A. Brechnitz Brothers—Brechnitz was a stockholder.

Q. And where was he located? A. Belleville, Illinois.

Q. Can you recall when this loss occurred on account of cut in price? A. I had a contract with Brechnitz made about the first of 1904, and there were numerous cuts from $1.20—$1.15 was the contract price and I had to shade my price.

2435 Q. State what cuts were made in that price.

The Court: Cuts made by the Buckeye people?

Mr. Abbott: I am asking him only if he knows that cuts were made by anybody in the price?

A. I know what I did in lowering the price.

Q. State of your own independent recollection then what you know of the various sales that you made to Mr. Brechnitz and the various prices which

2436 you made him—the change in prices. A. my contract wor $1.15; then it was reduced to $1.10, to $1.05, to $1.00 and rebated to ninety-four cents, so that ninety-four cents was the net price, and then one sale at ninety-two cents. Then I surrendered the business.

Q. When was it now that you surrendered the business? A. About 1905, I have forgotten the exact date—1905, two and one half years before I sold out the mills.

Q. Do you know of any instance of your own knowledge where the du Pont company sold its powder to any consumer of black blasting powder at less than cost? (After argument) A. Yes.

Q. Now will you give the circumstances by which you know that to be the case? A. In the cases

where they sold powder at ninety cents—ninety-two cents—in all cases of that kind, and in many cases where they sold at ninety-five cents delivered, where the freight rate was high, and in the district in which I operated.

Q. Do you know of any circumstances of your own personal knowledge where the du Pont Company and other manufacturers of black blasting powder respected each other's trade? A. Yes.

Q. State such instances as you have within your knowledge? A. You want the instances? 2438

Q. Yes, such instances as you know of. A. I know that I never had but one competitor, never, in all of the Central States, in the sale of powder and that competitor was the powder company that held the contract with the customer—no other powder companies.

Q. Wait a moment, what company by "the powder company" do you have reference to? A. It was always that company to which the Association had originally assigned the contract.

The Court: That does not tell us very much. Don't you know what the company was? 2439

The Witness: Well, it was the company that originally made the contract, and renewed it down indefinitely—to date.

Q. Can you name any company of that character and its connection with any particular contracts or series of contracts you have in mind as having been respected by the E. I. du Pont, de Nemours Powder Company?

Mr. Katzenbach: We object to that question as irrelevant and incompetent; it assumes that they respected something and the

answer would be hearsay in addition to that.

The Court: I don't comprehend fully the former answers.

By the Court:

Q. Do I understand in all your trade, you had but one competitor? A. All of the trade of Indiana, Illinois and Iowa was under contract of one or the other of the associated powder companies.

2441 Q. Now, one or the other of what? A. One of these sixteen powder associates—members of the association and the competitor was the particular powder company to which that trade had been assigned by the powder association.

Q. Assigned when? A. Assigned during the period beginning in the fall of 1897 under their system of contracting and which never varied, and once a customer was assigned to the du Pont Company he was permanently a du Pont customer. The contract was made with the du Pont Company and renewed from time to time.

2442 Q. That relates to the time before you went into business, doesn't it? A. The time from 1897 continuing down to 1908 when I sold out.

Q. What knowledge have you that that same system continued after you left the du Ponts? A. Why, I came in contact with it every day.

Q. You came in contact with competition? A. Competition with—for instance if it were the Newsom Brothers of Peoria, Illinois, to whom the du Pont contract had been given, authority for the du Ponts to contract, no other company ever competed with me in the trade at Newsom Brothers and no other company ever sold Newsom Brothers powder excepting the du Pont Company. Contracts were continually renewed as they expired, and they fre-

quently, a month or two months before they expired, the consideration was given in the shape of a reduced price for a renewal. I kept in touch with those renewals all the while, and I knew that that entire trade of Illinois, Iowa, Missouri and Indiana was contracted in that manner on down to—down to to-day.

Q. Outside of the fact that you never met a different competitor in a particular locality or concerning a particular customer, how do you know that that particular competitor was renewing old 2444
contracts? A. I knew it by the powder kegs that were used there, that is by the mine, and by knowing the kind of powder he used in his mine all the while.

Q. Would that indicate anything more than the fact that he still got the powder from the same source that he was having consumed there? A. In many instances I saw the contracts of customers, the customers would show me their contracts.

The Court: Very well, proceed.

Mr. Katzenbach: I would ask that the last 2445
preceding answer to the last preceding question of the witness be struck out as being based upon the testimony furnished by others and not responsive to the question.

The Court: I think the witness ought to differentiate, if there is a difference, in his answer, as concerning those whom he saw the contracts and those whom he did not see contracts. He has testified now generally.

Mr. Abbott: I think your Honor does not mean to hold that the only source of his information must be the contracts themselves.

The Court: No, I mean to say he has given now a general answer in response to my ques-

tions and it would appear that his sources of information were different in different cases. Now of course that being so, we want to know just what the different sources are and determine whether or not they are hearsay or competent.

By Mr. Abbott:

Q. Mr. Waddell, will you indicate what particu-
2447 lar customer or customers of black blasting powder you know of whose contracts you saw during this period if you can recall. A. I saw the Applegate & Lewis contract. I saw the Jones & Adams contract, two of them I think in Springfield, Illinois.

Q. Of course you understand—— A. I don't know, there was a great many of them that I saw, that were showed to me at different times.

Q. I want to be definite about this. Of course you understand I am inquiring about such contracts as you knew were in existence previous to 1903, not merely contracts which you saw after 1903, but I
2448 am inquiring with reference to those which were renewed.

Mr. McCarter: How does he know about the renewals because he saw the contracts?

The Court: That is what we are getting at. And this relates to a continuance of the old contract, that is the primary purpose of your question, and the next question is, how does he know they are renewals.

Mr. Abbott: That is what I will ask him if I am certain on that point.

A. Of course the best source of my information you don't accept, that is the statement of—

The Court: The statements which you accepted for your commercial purposes, are perhaps sufficient for your purposes, but they cannot be received here—that is, all of the sources of information cannot be received here.

Q. You had experience in regard to the system of contracting which had obtained during the time that you were employed by the Hazard Powder Company and down to the time when you left the em- 2450
ploy of the du Pont Powder Company, did you not? A. I did.

Q. I wish you would describe how that system originated and generally the object of the system.

Mr. McCarter: We object to that.

Q. In the first place how did the system originate? A. During the fall of 1897, a general system was adopted under which all agents of powder companies applied to their principals for the privilege of contracting with a given customer or set 2451
of customers, stating at the time the application was made, according to the rules adopted and consideration given them, the number of kegs of powder they had furnished each customer during the preceding two years and asking that the rebate be fixed in proportion to the number of kegs that had been furnished in the preceding years.

Q. What were the advantages to the customers by entering into a contract? A. The customer received a rebate off the particular brand of powder which he contracted for. All other powder companies in the association must quote the full schedule price. Say the schedule was $1.25 adopted by the Association, and it was du Pont contract, the du Pont

give the ten cent rebate, and all other companies must quote $1.25 so that threw the trade of that particular customer to the du Pont company or whatever company was entitled to it.

Q. What was the benefit to the du Pont Company? A. The du Pont Company tied up the trade of that particular customer and had the trade of that customer set aside for it for a term of years with the privilege of renewal.

2453 Q. Now what if anything did these contracts provide with reference to the giving out of information concerning the contract? (Objection sustained:)

To which ruling plaintiff's counsel then and there excepted and said exception was allowed.

2454 Q. Now what, if anything was the practice, at the time about which I have inquired of you, concerning renewals of contracts? A. That was fixed by the compendium of rules, that the contracts could be renewed at their expiration on the same terms as had been originally granted.

Q. Do you know anything about the system of contracts which obtained in the middle west if there was such a system during the years 1903 to 1908? (Objection overruled.) A. Yes.

Q. Describe what that system was.

Mr. McCarter: We object to that as irrelevant.

By the Court:

Q. From what did you derive knowledge what

were the evidences of things from which you drew your conclusions? A. I helped and assisted and acted upon a committee for T. C. du Pont in awarding a great many of those contracts.

Q. This relates to 1903 to 1908? A. These contracts were made in 1902 for terms of two, three or four years and were in existence up to 1905, some of them.

The Court (to the witness): You may testify to that if you know of that—that which had its origin at the time of course when he was in the employment of the defendants. 2456

By Mr. Abbott:

Q. Mr. Waddell, how does it happen that you know anything about the system of contracts which obtained during the years 1903 to 1908? A. By the fact that I knew that nearly all of the contracts lapped over from 1903 for one or two or three or four years, and that they were continuous and that they were kept going and powder was furnished under those contracts, I knew that. 2457

By the Court:

Q. How did you know that? A. I assisted in making the contracts. I acted for Mr. du Pont in the work of the Special Committee in awarding a great many of the contracts, fixing the terms for one, two or three years that they were to run and that would run them down to 1904 and 1905. I knew they continued along after 1903, the majority of them, and I knew, of course, through that knowledge of them, although I didn't see a contract made by the Powder Company personally after that time, and I was not present when it was made.

(Motion to strike the answer denied.)

2458

By Mr. Abbott:

Q. Mr. Waddell, will you state what the situation of the Buckeye Powder Company was during the years 1903 to 1908 so far as its ability to manufacture powder and supply the demand up to its capacity was concerned? A. We had ample capital. We had the mills and the facilities for making and delivering 250,000 kegs of powder per year; and I had the contracts made for the soda, the chief in-

2459 gredient, by the year generally for the sulphur.

Q. Was there or was not that capital stock paid in? A. $100,000 in cash.

Q. Now, what was the character of the buildings and machinery with reference to their use for making black blasting powder? Be as specific as you can. A. They were the very best that we could buy. We had a Hamilton-Corliss engine, ranked among the best. Our electric machinery was furnished by the General Electric Company and the Westinghouse people. I considered them the best that I could get. Our powder mill machinery was good.

2460 We had all of the facilities. Our wheels were the largest in the country, twelve-ton wheels, 24-inch face—20 and 24-inch face, the very best that we could buy.

Q. I will ask you to state whether or not the machinery which you acquired originally for the use in your plant was acquired at the then market price for machinery of that class, was it or was it not? A. I believe it was as cheap and possibly some of it was a little cheaper than I could have obtained it elsewhere; but there was other machinery that I could not get and I had to have specially made.

Q. Now then, what was this machinery that you had to have specially made? A. There was no corning mill—graining mill that I could buy in the

market at the time excepting one that was on sale by the people at York, Pennsylvania.

Q. Did you attempt to make any purchases of any machinery of anyone else other than Prox & Brinkman? A. Yes.

Q. And were you able to make those purchases? A. No.

Q. Now, who were the persons of whom you attempted to purchase machinery other than Prox & Brinkman? A. Olin Scott, Bennington, Vermont; Allentown Foundry & Machine Company, Allentown, Pennsylvania; Pusee & Jones, Wilmington, Delaware; I. & E. Greenwald, Cincinnati; and the Prox & Brinkman Company, which I understand are the only manufacturers outside of the powder companies themselves of powder machinery. 2462

Q. These names that you have given were the only manufacturers of powder machinery outside of the powder manufacturers themselves; is that right? A. The only ones.

Q. Then, you bought your machinery of Bauer, Kurtz & Company? A. Of Bauer, Kurtz & Co., yes. 2463

Q. Now, Mr. Waddell, concerning the character of the employees that you had in your employ during the time that you were manufacturing powder, I will ask you to state where they came from, and what their general experience was in the powder manufacturing business? A. Henry Justice, the superintendent, had been assistant superintendent of the Indiana Powder Mills, and he brought with him from those mills nearly all of the head men, that is the men who were in charge of the special mills—head wheel men, head press man, head corning mill man, head glaze man. The assistants or seconds to these men were, some of them, old practical powder men, who came from other mills, some

from Pennsylvania mills, some from Mooar, Iowa, mills, some from Senior, Kings, mills, Miami mills and some were the ordinary men that are hired about powder mills.

Q. Did you have any requirement or any conditions under which you employed these men; did you have any contract for their employment? A. Yes; they had a Union, Powder Workers' Union. We made contracts by the year with the Union.

Q. I show you Plaintiff's identification 1111 and
2465 1112, and ask you to state whether you know what those two identifications are? A. These are the contracts with the Powder Workers' Union.

Q. Do you know the signatures? A. Yes; all of them on this one (indicating).

Q. (Handing other paper to witness.) And all of these? A. And all of these.

Q. And what is that? (Indicating.) A. The seal of the company.

Mr. Abbott: We offer these two documents in evidence.

2466 (Plaintiff's Exhibit for Identification, P. 1111 and P 1112 received in evidence as P 1111 and P 1112.)

Q. Can you state what was the formula used by you in manufacturing black blasting powder while you were operating the Buckeye Powder plant? (Objection overruled.) A. Yes.

Q. How did you acquire that information? A. I gave the formula to the men at the mills—I originated it.

Q. Now what was that formula? A. 72 pounds of nitrate of soda, 11 1/5 pounds of (refers to paper) I would like to get that right——

Mr. McCarter: Well, I think if he knows

this formula he should speak from memory.

The Court: Well, if he constructed it he may figure it out.

A. 11 1/5 pounds of sulphur, and 16 4/5 pounds of charcoal.

Q. Now, do you know anything about the formulaes that were used by other manufacturers of black blasting powder? A. Yes.

Q. What other manufacturers of black blasting powder do you know the formula of? A. du Pont, 2468
Hazard.

Q. What was that formula, of the du Ponts? A. Practically the same as this, 72, 11 1/5, 16 4/5.

Q. What was the formula used by the Hazard? A. Same.

Q. What was the formula used by the Laflin & Rand? A. Theirs differed slightly; they didn't go into the niceties of dividing it into fifths. They made it 72, 12 and 16.

Q. I will ask you, Mr. Waddell, if you know what was the total output of the various mills which 2469
were located in the territory which you have heretofore described as the territory which was in the district that could be served from the Buckeye plant? A. I cannot give that to an exact figure. Approximately the Mooar, Iowa, mills——

Mr. McCarter: One moment. We are going to object to it. He is now trying to give information that he has gotten from some other source; it must be so.

The Court: Let him establish whether he has the knowledge of the output and capacity.

Q. How did you obtain this information that you

have given with reference to the output of these mills? A. I knew approximately the output of the du Pont mills and I came in contact with all of them in the trade—knew their customers, about what they would require and in a pretty close way I knew about what the output of their mills were as I came in contact with the trade.

Q. All right, Mr. Waddell, will you state what that output was? (Objected to and objection overruled.) A. The output of the Mooar, Iowa, plant
2471 of the du Ponts was about a million kegs a year, of the Equitable Powder Manufacturing Company at Alton, between 280,000 and 300,000 per year, kegs, of the Phoenix Powder Mills at Bellville, 225,000 kegs per year; of the Pleasant Prairie, Wisconsin mills of the du Ponts and Laflin & Rand, 125,000 kegs per year. Later the Egyptian Powder Mills were built, and up until the time they were bought by the Equitable their output was between one hundred and fifty and one hundred and seventy thousand kegs per year. The United States Pow-
2472 der Company in Indiana had an output up to 1905 of 175,000 kegs per year. The Excelcior Powder Company at Holmes Park, near Kansas City, Missouri, 150,000 kegs per year. I think that included all the mills within the territory that I primarily reached by Buckeye.

Q. Now, can you state the total amount included in the figures which you have given to the Court? A. Approximately 2½ million kegs.

Q. And what was the total output of the Buckeye Powder Company mills during the same period? A. Our average output per year was a little over 90,000 kegs.

Q. Can you state at this time how many kegs you manufactured during the year 1903? A. I have made up those figures from the books—1903—very

small amount—I think I could give you almost the exact figures from the figures that I have taken off the books if I am permitted to do it.

Q. Have you any data at your hand at the present time from which you could refresh your memory? A. Yes, I have. (Produces paper.) 7,043 kegs in 1903.

Q. How much in 1904? A. 108,211 kegs.

Q. And in 1905? A. 158,106.

Q. And in 1906? A. 74,786.

Q. In 1907? A. 86,375. 2474

Q. And in 1908, down to September 18th? A. 32,059.

Q. Now, did you have anything to do with the—A. There were a few kegs additional to that that I haven't a memorandum of, there were approximately a few extra kegs——

The Court: It is not necessary to go into the few extra kegs.

Mr. Abbott: No, I don't care to go into that unless the other side does. 2475

Q. Did you have anything to do with the operation of the Buckeye Powder Company plant after September 8, 1908? A. I did, for a year.

Q. In what capacity or under what circumstances did you have anything to do with the operation of that plant? A. I hired to Mr. Olin,—who was with the Western Powder Manufacturing Company—a year, and he gave me the title of Manager.

Q. Do you know anything about the number of kegs that were manufactured by that plant during that period? (Objection overruled.) A. We only run a half year on blasting powder, and a half year on rifle. We made 107,000 kegs.

Q. During that half year? A. During the last

Q. Now, at this time do you know anything about what was done with the black blasting powder which was manufactured by the company that succeeded the Buckeye Powder Company while you were in their service? (Objection overruled.) A. Yes.

Q. Now, what was done with the powder which was manufactured by the Western Powder Manufacturing Company during this period that you were in its employ? (Objected to and objection
2477 overruled.) A. It was sold to Egyptian, Equitable, Austin, du Pont, American Powder Mills, packed in their kegs, each company packing its own product in its own kegs, each company marketing in its own—there was a proportion of the output reserved for Buckeye and for Western.

Q. Can you state of your own knowledge what proportion of the output of that mill was reserved for use by the Western Powder Company? (Obfor use by the Western Powder Company? (Objection overruled.) A. Very small proportion. I can't give you the exact number of kegs.

2478 Q. You stated that this powder was packed in the kegs of these various companies whose names you have given. Was or was not it so packed on the premises before it was sent out? (Objection overruled.) A. Yes, packed when it was made, and on order from each company.

Q. Do you know whether or not all of the powder that was sent out in these various kegs under different names was manufactured at the plant of the Western Powder Manufacturing Company? (Objected to and objection overruled.) A. At the start we bought—one carload, I think, from Equitable, which was shipped up to Buckeye plant, and they acquired about a thousand kegs in the inventory of Buckeye.

Q. Do you know what was done with the thousand kegs of powder that was purchased from the Buckeye plant? A. Yes.

Q. Now, what was done with that one thousand kegs? A. Part of it was shipped out as Buckeye to Buckeye customers and part was shipped out to Buckeye customers, though in du Pont kegs—transferred to du Pont kegs—packed in du Pont kegs and shipped to their customers.

Q. When you entered the employ of the Buckeye Powder Company what was the salary which 2480
you received as president of that company? A. Five thousand dollars per year.

Q. How long did that salary continue? A. About a year and a half.

Q. And then what happened? A. I reduced my salary to thirty-six hundred.

Q. And how long did that continue? A. Up until I sold out.

Q. When you entered the employ of the Western Powder Company what salary did you receive? A. Twelve thousand dollars a year.

Q. You were asked the other day what salary 2481
you received while you were with the du Pont Company, and I wish to put that question again. A. Ten thousand the first year; eleven thousand the second, and twelve thousand for succeeding years.

Q. Now, I wish you would state what efforts you made at any time during the existence of the Buckeye Powder Company under your direction between 1903 to 1908 to dispose of that property. A. No efforts until about 1907. We tried to sell to several parties.

Q. Well, now, who were those parties? A. The Coal Operators of Illinois—we tried to form a company with them. The Consolidated Coal Company of St. Louis. The Mine Workers of America, the

Illinois Miners' Union—they had about two million dollars in their treasury, and I tried to sell the plant to them; and our stockholders tried to sell it to du Ponts' and also to Mr. Olin and Mr. Lent.

Q. What stockholders in particular did you have in mind, if any, that tried to sell it to the du Ponts? A. Mr. Luthy, President of the Merchants National Bank, was the stockholder.

Q. Do you know anything about those negotiations yourself personally? A. Not until after they
2483 were over; I knew of them then.

Q. Now, you mentioned Messrs. Olin and Lent; when did you first begin your negotiations with Mr. Olin and Mr. Lent to sell them that property? A. About January, 1908.

Q. And when did you conclude your negotiations? A. September 18, 1908.

Q. What did you finally dispose of the property for, how much? A. Seventy-five thousand dollars, payable twenty-five thousand in cash, twenty-five thousand in a year, twenty-five thousand in two
2484 years and for a little over fifty-five hundred dollars covering the inventory of the materials.'

Q. When you disposed of this property to Mr. Olin what, if anything, was done by him with reference to the making use of the property for manufacturing powder? Did he begin at once? A. Yes, very soon.

Q. State whether at the time you sold it the plant was in operation? A. Well, it had been up to the 1st of September, but while we were negotiating I suspended operation.

Q. How long did that suspension continue? A. Eighteen or twenty days.

Q. Now, proceed and state whether or not there were any changes made by Mr. Lent at the time he took over the property for the purpose of con-

tinuing the manufacture of powder? A. There were some slight changes made in the industrial railway track that ran around the plant; some minor changes, and there was a separator put in for the separation of rifle powder, which is different from the blasting powders, different sizes of grains —very much smaller—had to have a new separator specially for the rifle. Otherwise there was no change during the year.

Q. Were there any changes in the buildings in any way? A. No. 2486

Q. Were any changes made during the time that you were in the employ of that company in buildings or machinery other than those that you have mentioned? A. No. There might have been some minor repairs, but there were no changes during the year.

Q. After you disposed of the property, what, if anything, was done with the proceeds which you received from the sale of that property? A. We paid our debts and distributed the balance to the stockholders.

Q. What was the final difference that was received by the stockholders? A. $16,681, about. I can give it to you exact if I may—— 2487

Q. If that is approximately correct, it is satisfactory to me. A. The loss on the stock was about $81,811.15, cash loss.

Q. What, if anything, did you do after you found that your customers were being lost, for the purpose of protecting your interests as you deemed them to be, to save yourself from further loss of customers? A. I don't know whether this would be an answer to your question—I filed a petition with the Department of Justice at Washington to help me if they could, protect my interest.

Q. Mr. Waddell, do you know what system prevails or did prevail during the years 1903 to 1908,

inclusive, concerning the kind of agents there were for the sale and handling of black blasting powder? A. Yes.

Q. Will you state to the Court your knowledge upon that subject as to what kinds of agents have been from time to time established and used in the sale of black blasting powder? (Objection sustained.)

2489 Mr. Katzenbach: We object to that unless there is some connection in the question between these defendants or with these defendants. How would an agency of someone else engaged in black blasting powder be important?

The Court: Your question is open to that objection, do you mean the Buckeye or the du Pont Company or do you mean someone else?

2490 Q. Do you know anything about the system that prevailed in the Hazard Powder Company and the du Pont Powder Company before you left the employ of the latter company? A. Yes, sir.

Q. Concerning agencies? A. Yes.

Q. State what that system was. A. They had several kinds of agencies. There was the salaried agents, who received a salary, usually a general agent in charge of an office, and then there was a commission agent who received a percentage on his sales, usually ten per cent or on carloads 5 per cent, and then there was what we knew as the net price agent, to whom we made a net price, allowing him to make his own profit above that net price. Also an agent to whom a selling price was given and a commission, or an allowance for his services below that general selling price.

Q. Mr. Waddell, will you state how wide your experience has been in connection with black blasting powder plants of the United States? A. I have been pretty familiar with black blasting mills.

Q. How many plants of that character have you visited in the United States? A. Some eight or ten I think.

Q. Will you name those that you have visited? (Objection overruled.) A. I visited the Hazard plant at Schagticoke and Hazardville, I think four times, and was there a day each time, and examined the machinery thoroughly, knew the plant all pretty well. I visited Brandywine Mills of the du Ponts.

Q. Where are they located? A. Located at Wilmington, Del. I visited the Ohio Powder Mills, at Youngstown, Ohio. I had blueprints of those mills and visited the King Mills at King's Mills, Ohio, near Cincinnati. I had the drawings and blueprints of those mills also. I visited the Miami Mills at Goes Station. I am not quite so familiar with those. I visited the Phoenix Mills at Kellogg, W. Va., a number of times. And the Indiana Powder Mills, I was there two or three times while they were building. I was consulted in regard to the machinery and method of putting it up, and so on. I visited the Phoenix plant at Phoenix, Illinois. I don't know so much about that as I do of the others. I have also visited the Equitable Plant, Mr. Olin's plant at East Alton, Ills., and the Buckeye Plant and the Northwestern.

Q. Is that all you recall at this time? A. I think that is all—Oh, well, I visited one, too, in Pennsylvania. One at Horal, Pa. It is owned by Mr. McAbee.

Q. Mr. Waddell, in your testimony, as you have heretofore given it, did you wish to have it

2494 *R. S. Waddell—Direct*

stood that there had been absolutely no depreciation whatever in the plant of the Buckeye Powder Company? (Objection overruled.) A. I spoke of the depreciation in the value of our plant, $117,000 I think I stated was the cost of our plant. Now, as I understood the question—was there any depreciation in the value of that plant. I said, no. We increased the value of the plant. I think the plant at the time I sold out we had added to it enough to make it of value of at least $134,000, as I fig-
2495 ured it at that time. And $5,000 of that increase was in the land, increase in the value of the land.

Q. Mr. Waddell, you are familiar with the testimony of Mr. Coyne with reference to the capacity of certain plants, so-called independent powder plants, are you? A. Some of them. Not all of them.

Q. You were familiar with a certain exhibit which Mr. Coyne offered, or which was offered through Mr. Coyne, in which the capacity of the Buckeye Powder plant was fixed at 300,000 kegs per annum? A. I saw that statement; yes, sir.

2496 Q. Will you state what the facts are with reference to that matter—as to whether the capacity of the Buckeye Powder Mill was 300,000 kegs per annum?

Q. Will you answer the question, Mr. Waddell. A. Will you read that question, please?

Q. (Repeated.) A. The ultimate capacity of the plant, run full time, and about all the time that an ordinary manufacturing plant could run, from 280 to 300 days per year, would be 300,000 kegs, as Mr. Coyne stated; but I was giving the conservative output of the plant, as I could have produced, with the amount of working capital that I had, at 250,000, a conservative estimate of what could be readily be produced with the plant.

Q. Have you ever had any experience in connection with black blasting powder plants, in so far as their operation was concerned, and did you ever form any opinions based upon that experience, concerning the amount of depreciation, which takes place in such plants? (Objected to and objection overruled.) A. In my own experience—the only experience I had in operations of the plant was the Buckeye. I have observed plants and have—I know something of machinery and its use, and as to rebuilding the plants. 2498

Q. Do you know whether or not there is an amount—whether it is the custom to charge off a certain amount, from time to time, for depreciation? (Objected to.)

By the Court:

Q. Do you know it? A. No; I do not know definitely what any specific amount would be, excepting my own impressions.

Q. You don't know what the custom is in regard to such matters? A. Not in powder mills. I know in a general way what manufacturing plants ordinarily take, but it would not be confined to powder mills. 99

By Mr. Abbott:

Q. Mr. Waddell, will you state whether or not you have any knowledge of certain mines known among the coal operators, or others, as "team mines," or "country banks"? A. Yes.

Q. Will you state what they are? What is the designation; what is that designation for? A. They are known as non-shipping mines and team mines. They are small mines, not having a shaft, not reaching lower bodies of coal, but they go into the hill-

side and they mine coal only for delivery with teams around a town. They are usually in the vicinity of some town or city, but they do not do any shipping of coal by railroad cars.

Q. Will you state whether or not there were during the years 1903 to 1908 any such mines in the neighborhood of Peoria? (Objection overruled.) A. Yes; nearly all the small shipping mines were in that vicinity.

2501 Q. Can you readily recall to your mind any such mines, giving the names of the owners of such mines? A. Yes; there was the East Peoria Coal Company—Giebelhauser's mine; the Lake Erie Coal Company, and one other one—the Wolschlag Mine on the east side of the river, across from Peoria; and a number of them in what we know as Big Hollow—the Mohn Mine, Mohn Coal Company, and I do not recall—about a dozen of them in that vicinity, small.

Q. About how many men, all told, if you know, are employed in that class of mining in and around Peoria, what is known as the Peoria district (Ob-
2502 jection overruled.) A. Oh, from 2 to 15 men would be the—15 would be the extreme. Most of them employ eight or ten men.

Q. You mean for mining? A. Miners. During the busy season; they do not operate continuously during the year.

Q. What I wanted to get at was about the total number of employees in mines of that class? A. I think; I should estimate in the team mines in the vicinity of Peoria, within 10 miles of the city, a total of 150 men.

Q. Now, Mr. Waddell, did the Buckeye Powder Company at any time have any contracts with any consumers of black blasting powder? A. Yes.

Q. Were those contracts in writing? A. Yes.

Q. I show you (handing to witness) certain documents and ask you to examine them, and state whether or not they have any relation to the contracts which you had with various persons? A. This (indicating) is a contract with the DeKalb Coal & Mining Company.

Q. State whether or not they relate to contracts, and then I will offer them? A. Yes; those are all contracts of the Buckeye Powder Company.

Q. Are or are not those all of the contracts that the Buckeye Powder Company at any time had with 2504
customers? A. With coal operators; yes, there is possibly a renewal of the contract with the Northwestern Coal & Mining Company of Bevier, Missouri, that may not appear here. That renewal was under an option named in the contract, but they had a continuous contract from 1904 to 1908, inclusive.

(Said documents were received in evidence and marked Plaintiff's Exhibits 1305 to 1317 inclusive.)

Q. Now, I would like to have you state, Mr. 2505
Waddell, whether any of the persons, or corporations, with whom those contracts that have just been introduced in evidence were executed, continued to be customers of the Buckeye Powder Company after the expiration of the terms of the contract? A. May I look at the contracts?

Q. Yes; take the exhibits and examine them. As you examine them, state which one? A. The New York Coal Company of Columbus, Ohio, we lost before the expiration of the contract.

Q. State the circumstances under which you lost the New York Coal Company, before its expiration? A. I shipped them one carload of powder, I think on a two year contract. They were named a better price.

Mr. Button: Now——

The Court: (To the witness) Of course, circumstances which you know of your own knowledge. You can state what you did.

A. I surrendered the trade.

Q. Proceed, Mr. Waddell, and tell what the facts were with regard to any representations that were made to you, concerning prices offered by other companies?

2507

The Court (to the witness): I do not want the details of what was said to you.

A. The company, through its president, informed me they had a lower price, and gave me the opportunity to meet it. I declined the business and cancelled the contract.

Q. Who was the president of the company? A. Mr. E. M. Poston. White Breast Fuel Company of Illinois. I lost that trade, because I declined to furnish them more powder. Their credit was 2508 not good. They were back on their bills and I surrendered the business. Cancelled the contract. United States Gypsum Company. I filled that contract, but it was not renewed. Randolph Macon Coal Company.

Q. Who was the president of the company? A. Mr. W. E. Merlin was general manager. The president was Mr. Weir.

Q. What were Mr. Weir's initials. A. I think Colonel W. E. Weir. I think it is Colonel Weir of Kansas City.

Q. Do you recollect the deposition that I produced in this case, from Mr. Weir? A. Yes, sir.

Q. Is that the Mr. Weir that you have in mind? A. The same one.

Q. Now, take the next and state what the circum-

stances were surrounding the surrender of that contract? A. Mr. Merlin informed me——

Mr. Button: I object to what he informed him.

The Court: Relate in a straight and general way why the contract was not fulfilled, if it was not. Did you ship anything under it?

I shipped possibly 12,000 kegs under the contract, and it was called. 2510

Q. Why was it cancelled? (Objection overruled.) A. The contracting party, Randolph Macon Coal Company, had a lower price that I could not meet.

By the Court:

Q. Well, they said they had a lower price? A. They said they had a lower price which I could not meet, then we cancelled the contract.

Q. And which you did not? A. Which I did not meet. 2511

By Mr. Abbott:

Q. Do you know what the total amount of the annual consumption of black blasting powder was by the Randolph Macon Coal Company? (Objection overruled.) A. 45,000 kegs, approximately. The next is the Great Northern Fuel Company of Kansas City, Mo. Their mines were near Novinger, Missouri. The president is Mr. W. S. McCaull; signed the contract for three years.

Q. What is the date of the contract? A. The date of the contract was the 25th day of May, 1905.

Q. Now, how long did you continue to furnish

powder under that contract? A. Shipped him one carload, and he said to me——

(Objected to and after argument):

The Court: If it is a question of a lower price, he may state the general fact that Mr. McCaull said he had a lower price offered; then nothing more may be shown. Other matters will not be allowed to go in.

2513 A. McCaull informed me that he had a lower price and cancelled his contract. Charles F. Keeler Coal Company of Chicago. We had a contract with Mr. Keeler for one year.

Q. Was the contract continued? A. No.

Q. Were any reasons given why it was not?

The Court: Was it fulfilled?

A. I furnished, I think, about three carloads of powder under the contract, and on reduced prices. I began at $1.15, $1.05 and $1. The last shipment
2514 I made to him was $1. He informed me he had a better price. I could not meet it and released him from his contract.

Q. Did Mr. Keeler sustain any relation to the Buckeye Powder Company, in any way? A. He was a stockholder.

Q. At that time? A. Yes, sir. Mr. C. G. Brecknitz of Bellville, Illinois. The contract was dated the 31st day of May, 1904; terms two years.

Q. Did you fill that contract? A. No, sir; it was cancelled.

Q. When was it cancelled? A. Rather it was not cancelled; I released Mr. Brechnitz. The price I gave him was $1.15, was reduced to $1.12, $1.10, $1.05, $1.00, 95 cents, 92 cents. He informed me he had a better price or better arrangement, re-

quiring less money to carry on his business, and asked that the contract be suspended, and I consented.

Q. What was the occasion for your reducing the price from time to time? (Objection overruled.) A. Quotations of competitors.

Q. You made reductions from time to time on representations made to you by Mr. Brechnitz? A. I did.

Q. That he had better prices? A. Yes, sir.

2516

Q. Now, in regard to Mr. Brechnitz, what relation, if any, did he sustain to the Buckeye Powder Company? A. He was a stockholder in the company.

Q. Did he continue to be a stockholder after the breaking of this contract, or determination of this contract? A. Yes, sir. He is today. Or his estate is.

Q. Is this the same Mr. Brechnitz who gave a deposition in this case? A. This is the George Brechnitz; the father is dead and he was succeeded by his two sons. Emil was the elder of the sons 2517 and operated the business, and succeeded his father in the operation of the business, and he was the one who gave the deposition.

Q. Do you remember when Mr. C. G. Brechnitz died? A. I should think about 1904.

Q. This contract was terminated in 1905, did you say? A. I don't know just the date, but I judge it was about that time, 1905.

Q. With whom of your correspondents, or which one of these parties was it that made those statements to you about the better price, and final arrangement? Was it C. G. Brechnitz? A. All of the powder business was conducted by Emil Brechnitz.

Q. Emil Brechnitz? A. The father was the banker.

Q. He was the one who gave the deposition? A. Yes, sir.

Q. Was he the one with whom this document which was referred to a while ago as Defendant's Exhibit 192, in the Government case—was he the one with whom you had negotiations concerning that matter? A. Yes, sir.

Q. And those negotiations were in 1908? A.
2519 Yes, sir. The contracts of the Northwestern Coal and Mining Company, Bevier, Mo., were originally made at, I believe, $1.20, and reduced to $1.15, $1.17½, $1.15, $1.10, $1.05, $1.03, $1.00, 97 cents.

Q. What were these? A. Mr.——

Q. Proceed. A. Mr. Thurston, the treasurer, informed me that he was offered a lower price. I consented to meet it. He told me he thought 97½ cents was low enough for powder and he would stay with me, and he has. He bought the Buckeye continuously, and I contracted with him for Western
2520 —during the year I remained with the Western Powder Company.

Q. Now, those various changes in reductions of prices which you made him, were they made upon representations to you that he had a better price? A. Yes, sir.

Q. Were they made for the purpose of meeting those prices? A. I met the prices. (Continuing.) Contract with the Weir Coal Company was at $1.16.

Q. You say you continued to sell powder to Mr. Thurston's Company continually? A. Yes, sir.

Q. Will you state about how many kegs of powder you sold him, all told? (Objection overruled.) A. My recollection is about 67,000 kegs during the continuation of the Buckeye business.

Q. State whether or not any complaints were made to you as to the quality of the powder which you shipped to Mr. Thurston at any time during the period of your business with him? (Objection overruled.) A. Never. The contract of W. E. Weir, president of the Weir Coal Company (examines paper). I will give you his name now, F. E. Weir, I thought it was W. E. Weir. This contract was made the 1st day of February, 1904, at $1.16 a keg for deliveries at Huntsville and Bevier, Mo. This was the predecessor of Randolph-Macon, 2522
and it included other mines later under the Randolph-Macon contract.

Q. Randolph-Macon was the mine who had that other contract you referred to a while ago? A. Under the first I named. This contract was made at $1.16. I reduced the price to $1.12 and later the price to Randolph-Macon.

Q. Why did you reduce the price from time to time, as you have indicated? A. On information from Col. Weir that he was offered lower prices.

Q. You have stated what was the capacity of the Randolph-Macon—what the Randolph-Macon 2523
consumed in a year, of powder. Will you state what the Huntsville mines consumed per year? (Objection overruled.) A. The F. E. Weir Company consumed about 50,000 kegs of powder per year. That included the Huntsville mines.

Q. What else did it include? A. Some of the mines in Kansas that I did not have a contract with.

Q. Did or did not it include the Randolph-Macon mines? A. All of the Randolph-Macon mines; yes, sir.

Q. So that at that time that contract covered a quantity of powder amounting to about 50,000 kegs per year. A. Yes, covered it all. I didn't ship there, though.

Q. Have you examined all the contracts? A. There is another one here. No. There is the De Camp Coal Mining Company. This contract was made the 8th day of June, 1905, at $1.03 a keg.

Q. And how long did you continue to supply powder under that contract? A. During the entire term of the contract, at reduced prices.

Q. Will you indicate, if you can, what the prices were, and the changes that took place from time to time? A. I would have to refer to the books
2525 for that.

Q. Will you do that during the noon hour? A. I will. Willis Coal Mining Company of St. Louis. Their mines were at Willisville, Ill. The price was $1.10 a keg. It was made the 31st of May, 1904.

By Mr. McCarter:

Q. For how long? A. A period of two years.

By Mr. Abbott:

Q. Did you continue to supply powder under that particular contract during the full term of the contract? A. No, I supplied about 29,000 kegs under the contract, the price went down to a point
2526 that I could not meet the quotations given to me by the company, and they asked to be released from their contract, and I gave it up.

Q. Can you state now what the various reductions in price were? A. I will have to refer to the books for that.

Q. Will you do that during the noon hour? A. I will.

Q. By the way, in connection with that last contract, I will ask you if you know who was the superintendent of the Willis Coal Company mines, or manager? A. I know him very well. He gave his deposition here.

Q. Do you refer to Mr. Jeremiah? A. Jeremiah, yes.

Q. Will you state whether or not you had any complaint at any time from any one connected with the Willis Coal Company, concerning the powder which you shipped to them? A. No.

Q. And you supplied them with 29,000 kegs? A. Abount 29,000 kegs.

Q. Very well. Proceed with the next. A. I think that covers all the contracts.

Q. During the course of your management of the Buckeye Powder Company, from 1903 to 1908, inclusive, did you at any time endeavor to enter into 2528
contracts or to secure contracts with other consumers of black blasting powder than those parties whose names you have given here as parties with whom you had contracts? A. Yes; a great many of them.

Q. As I understand you, you did not succeed in making any except these contracts that have been submitted? A. I recollect a contract with the Staunton Coal Mining Company; they do not appear to be among these papers.

Q. Where was that company located? A. At 2529
Staunton, Ill.

Q. Can you explain the absence of that contract? A. I don't know where it has escaped, or where it may be. I only have an indistinct recollection of it, but I will look it up in the books and give you the data.

Q. Aside from those then, you had no contract with any other consumer of black blasting powder, during this period? A. No, sir.

Q. I will ask you to state the names of such persons, as you can recall, with whom you made any effort in any manner to get their business for black blasting powder? A. Yes. With nearly every coal operator in the State of Illinois, including among them just a few that I could name. Jones & Adams Coal Company.

Q. Located where? A. Chicago. Chicago & Big Muddy Coal Company, Chicago; Chicago & Herrin Coal Company. Sunnyside Coal Company.

Q. Where? Chicago. The mines were at Herrin. O'Gara Coal Company. They had about 19 mines. The Deering Coal Company; they had about 15 mines; the Illinois Collieries Company.

Q. Where was that latter company located? A. They had 12 mines, I think, along the Chicago & Alton Railroad below Springfield. The main offices
2531 were in Chicago.

Q. Did they have offices anywhere else? A. At Springfield.

Q. I will ask you to state who was the president of that Company? A. Mr. Traer, William Traer. Staunton Coal, the Consolidated Mining Company, Consolidated Coal Company of St. Louis, having probably 15 mines in Illinois, and they owned the Western Mining Company, associated with it, and they bought it in conjunction. They had about 25 mines in Missouri, southeast Kansas and Arkan-
2532 sas.

Q. Now, about what was, if you know, the total amount of powder consumed by that company during a year?

Mr. Button: I object to that.

Q. In a given year?

Mr. Button: That must be hearsay.
The Court: If you know.

A. Yes, I know.

Mr. Button: May I ask the source of his knowledge?

The Court: That has been inquired so many times before.

By Mr. Button:

Q. Have you any personal knowledge on the subject? A. Yes. I bid on the contracts a number of times, and I had the list of all their mines. I discussed it with Mr. Simpson, the general purchasing agent, very frequently.

Q. Did you make a contract with them? A. I 2534
never made a contract with him. I sold them a good deal of powder.

Q. Then all you know is what he told you about his requirements? A. I had to bid on certain quantities of powder.

Q. Did that cover the entire requirements that you were bidding on? A. I bid in two ways. I bid once on the Illinois mines of the Consolidated Coal Company, of St. Louis, and then I bid another time on the entire mines, including all of the southwest. I don't know just how many mines. I sold them a number of carloads. 2535

Q. And that is the entire source of your knowledge on the subject? A. No, sir. I have been to the mines. I know a good deal about them, and I have shipped to the mines. I know what the concern was.

A. Their consumption varied from 60,000 kegs in 1904 up to 110,000 kegs in 1908. I also bid at one time in connection with the Central Coal & Coke Company, and the Western Coal Mining Company, on a total of 185,000 kegs per year.

By Mr. Abbott:

Q. Who was the person who had charge of the affairs of the Western Coal Company and the Cen-

tral Coal & Coke Company with whom you had most of your business? A. M. D. Simpson, the general purchasing agent of the Gould interests. That included the Wabash Railroad interest; was the Consolidated & Western Coal Mining Company. And Mr. Keith, Charles Keith, was president of the Central Coal & Coke Company of Kansas City. I have forgotten the name of the purchasing agent there that I met, I know him quite well.

2537 Q. Now, did any of those gentlemen give you any reasons why, any special reasons, why they could not do business with you?

Mr. Button: I object to that.

The Court: I will allow him to show whether they offered him a contract.

A. Yes.

Q. Now, proceed, within the ruling of the Court, and tell the facts in connection with that matter. A. I offered to contract with them and they stated they were already under contract.

2538 Q. Did you at any time offer to contract with them when they were not under contract? A. I never knew them when they were not under contract, excepting the Western when I bid on their proposition.

Q. About what time was it that this occurred, this bidding on the Western business? A. They gave opportunities, solicited bids once a year. They renewed their contract yearly.

Q. Can you state at this time what you offered to furnish your powder for? A. The prices varied according to the delivery points. I quoted as low as 98 cents delivered in Illinois and $1.20 delivered in Arkansas.

Q. You mean delivered to their mines in Illi-

nois? A. Delivered to their mines in carload lots.

Q. Illinois and Arkansas? A. Illinois and Arkansas. The freight rates to their Western mines were heavier. They contracted at 97½ cents and I sold them at $1.08.

Mr. Katzenbach: I object.

By the Court:

Q. (To the witness): Contracted with you? A. No, sir. 2540

The Court: Strike it out.

By Mr. Abbott:

Q. Do you know anything about this matter of whom they contracted with, of your own personal knowledge? A. Yes, sir.

Q. State what the source of that knowledge is? A. I sat in an adjoining room in Mr. Simpson's office when my brother called on him, representing the du Pont Company, with Mr. Spicer, and I conferred with Mr. Simpson in one room while my brother was conferring with him in the other, and I knew the proposition. 2541

Q. Was it at this time that these contracts were made that you have indicated? A. Yes. One of them.

Q. Do you know what the price was which was made by the du Pont Powder Company, as represented by your brother and Mr. Spicer?

Mr. Button: We object.

The Court: He can show what he heard was offered in the adjoining room.

heard what was said in the adjoining room?
The Witness: Yes; the door was open.

By Mr. Button:

Q. Did you hear through the partition? A. The door was open. I sat right by the side of the door.
Q. Who was doing the talking there? A. I was there conferring with Mr. Simpson when my brother and Mr. Spicer sent in their cards, or rather Mr.
2543 Spicer sent the cards in, and he asked me to step into the other room and said he wanted me to hear the conversation, and I heard it.

By Mr. Abbott:

Q. Now, tell what the conversation was that you heard? A. My brother, Fred J. Waddell, was representing the du Pont Company from the Wilmington, Del., office, and he stated that he had been sent out to St. Louis, that the prices were ridiculously low; he said our price to you should have been
2544 $1.10. Mr. Simpson told him he could do better from the Buckeye than that. He said, "Well, I don't think you will do much better than that as an average price to your mines. I know my brother's inclination too well to know that he would deliver powder from Illinois down into Arkansas for any such ridiculous price. These prices have been cut down from day to day, were cut down from what we think should be the right price, the average price to your mines, and it is now down to 97½ cents, and I have been sent here to clean it up. Now, we will give you until 2 o'clock this afternoon to decide whether you will make the contract with us at 97½ cents. If not, it will be withdrawn." He took the time to confer with Mr. Brush or Bush—Brush—the president of his com-

pany, and the gentlemen left. I then discussed the question, the conversation that I had overheard with Mr. Simpson, and I advised him to make the contract; that I couldn't meet any such figures.

Q. You were to inform yourself regarding prices at which you sold powder to the Willis Coal Mining Company, and the DeCamp Coal Mining Company. Did you do that? A. I did.

Q. What are the facts in that matter? A. The price to Willis started in at $1.10; was reduced to $1.00 and the major part which I supplied Willis 2546
was at a dollar, until I had to give up their business. DeCamp started in at the price named in the contract, and that was reduced to $1.00—the major part of theirs was furnished at a dollar.

Q. Now, you spoke of having made various—having released the New York Coal Company from its contract, upon representations that another price—a better price had been made. Will you state whether there was anything in the contract itself which required that to be done? Do you recollect? 2547

Mr. Button: The contract speaks——

The Court: The contract speaks for itself. All this witness could do would be to point it out, that is all.

Mr. Abbott: Very well. I think if your Honor please, in view of our past evidence in that matter, I will read one or two of them to the jury. I will now read from Plaintiff's Exhibit 1305: "First party hereby guarantees the price of $1.10 per keg delivered against bona fide offers by others. Should a lower price be named party of the second part first party may elect to meet the lower price, otherwise second party is at lib-

2548 erty to purchase from others until such time as first party meets the lower price."

Now, the contract with Randolph Macon Coal Company and the Buckeye Powder Company, contains this provision, after setting forth the price: "The above price is guaranteed against any lower price made on Buckeye powder, in the same district. Should a better price be made by other reputable powder companies to party
2549 of the second part, and should party of the first part decline to meet the lower price, party of the second part shall be at liberty to purchase from such other company, until such time as party of the first part may elect to accept said lower price, when purchase shall be resumed under this contract."

The contract between the Buckeye Powder Company and the Northwestern Coal & Mining Company, has this provision: "The above price is guaranteed against any lower price made on Buckeye powder in the same
2550 district. Should a better price be made by other reputable powder companies to party of the second part, and should party of the first part decline to meet the lower price, party of the second part shall be at liberty to purchase from said other company until such time as party of the first part may elect to accept said lower prices, when purchases shall be resumed under this contract."

Q. Mr. Waddell, you were proceeding to relate the names of persons and consumers of black blasting powder, upon whom you had called or to whom you had made an effort to sell Buckeye Powder. You were referring to a conversation that you had

with Mr. Simpson. Had you finished relating that matter? A. I might state I sold Mr. Simpson about 12,000 kegs of powder, but I did not have a contract with him at the time.

Q. When did you make that sale? A. The latter part of 1907—during the fall months of 1907 I shipped him I think 12 or 15 carloads at $1.08 per keg—$1.08½ cents per keg.

Q. At what point was this delivered? You say he has a number of mines? A. Southwest Missouri and Southeast Kansas. 2552

Q. Now, do you know whether that powder was used by Mr. Simpson? A. I do.

Q. Do you know what the results were, so far as the use of the Buckeye powder in that field was concerned?

Mr. Button: Objected to, unless he was there and saw it.

By the Court:

Q. Were you there? A. I did not visit the mines myself. I visited the offices of the coal company in St. Louis, and talked with the officers, and I got the orders that I did not fill. 2553

By Mr. Abbott:

Q. From that district? A. From that district.

Q. Mr. Waddell, will you give the names of other consumers of black blasting powder, to whom you made efforts to sell and made contracts with during the period from 1903 to 1908, if you can recall? A. There were more than a hundred of them in Illinois, aside from those that I have named. All of the members of the Illinois Coal Operators' Association, which include all the large operators

of the state, and all of the Missouri coal operators. All of them in Michigan and most of them in Ohio. I know the Sunday Creek Coal Company——

Q. What results did you have with your efforts to sell the Sunday Creek Coal Company?

Mr. Button: Objected to as immaterial. We do not see why, your Honor—why the defendants are connected in this thing in any way.

2555

Q. Well, did you succeed in making any sale to the Sunday Creek Coal Company? A. No.

Q. Were there any reasons given to you, why they did not purchase powder of you? A. Yes, sir.

Mr. Button: Objected to as immaterial.

The Court: Where there has been no contract, no sale, and he failed to sell, he may show the offer he made to them. He may show the quotation he made to them.

Mr. Abbott: Very well.

2556

Q. What was the quotation which you made?

The Court: You are not required to show it.

Mr. Abbott: No, but I desire it, if your Honor please.

Mr. Button: Was it in writing?

Q. Well, was it in writing? A. No, it was verbally, orally.

Q. Did you receive any answer, either written or verbally, from the officers of the Sunday Creek Coal Company, with reference to your proposition? A. Yes, sir.

Q. In what form was it, written or verbal? A. In writing, yes, a letter. I think I had two or three letters from them.

Q. What was your quotation? A. My recollection is $1.10, but I may be mistaken about that.

Q. Now, will you state how extensive was the business of the Sunday Creek Coal Company? A. About 75,000 to 100,000 kegs a year.

Q. (Handing witness) I show you Plaintiff's Exhibit P-105, and ask you to state whether you know anything about that document? A. Yes, sir, letter 2558
from the general manager of the Sunday Creek.

Q. I show you Exhibit P-106, and ask you if you know anything about that document? A. Yes, letter from the same party, general manager.

Q. (Handing to witness) I ask you to look at P-107 and ask you if you know anything about that document? A. Yes, the manager of stores of the Sunday Creek.

Q. Are these the writings that you state you received from the Sunday Creek Coal Company, with reference to your offer to sell them powder? A. 2559
Yes. In further reply to that question that you asked, it would be impossible for me to give a list of all the coal operators that I called on, in various states. I attended their meetings frequently when they would assemble, and solicited the business of all of them.

A certain letter written by John H. Winder, General Manager of the Sunday Creek Coal Company, of Columbus, Ohio, to the Buckeye Powder Company, Perio, Illinois, dated June 21st, 1904 (marked P-105), was received in evidence as Plaintiff's Exhibit 1318 and read to the jury as follows:

2560 *R. S. Waddell—Direct*

June 21, 1904.

Buckeye Powder Company,

Peoria, Ill.

Gentlemen:

Your letter of the 15th to us in reference to powder has been received. Please advise what price you can make in carload lots delivered at points in the Hocking Valley along the line of the Hocking
2561 Valley Railway, T. & O. C., and Zanesville & Western, and points in carload lots delivered in the Kanawha District along the line of the K. & M. Ry. We use all told between seventy-five and one hundred thousand kegs per annum.

Yours very truly,

J. H. Winder,
General Manager.

A certain letter written by John H. Winder, Gen-
2562 eral Manager of the Sunday Creek Coal Company, of Columbus, Ohio, to R. S. Waddell, President Buckeye Powder Company, dated July 16th, 1904 (marked P-106), was received in evidence as Plaintiff's Exhibit 1319 and read to the jury as follows:

July 16, 1904.

Mr. R. S. Waddell, President,
The Buckeye Powder Company,

Peoria, Ill.

Dear Sir:—

Referring to your favor July 8th and previous communication also the [illegible]

Schwarts: All of these matters were brought to my attention a day or two ago upon my return, having been continuously absent from the city for several weeks.

I would advise that we have closed our contract for powder for the coming year.

Yours truly,

SN Jno. H. Winder,
General Manager.

A certain letter written by G. E. Tetirick, Manager of Stores of Sunday Creek Coal Company, of Columbus, Ohio, to Buckeye Powder Company, dated October 6th, 1905 (marked P-107), was received in evidence as Plaintiff's Exhibit 1320 and read to the jury as follows: 2564

Columbus, Ohio, Oct. 6, 1905.

The Buckeye Powder Co.,
Peoria, Ill.

Gentlemen: 2565

Replying to yours of October 4th, will have to advise that we have a contract for Powder that is good for two years, this Company having lately taken over the property of the Continental Coal Company.

G. E. Tetirick,
Manager of Stores.

Q. Well, did you or not use your best efforts and your best ability to make sales of the products of the Buckeye mills, to the various consumers of black blasting powder in the district which you reached? A. I was exceedingly active [illegible]

Mr. Katzenbach: I object to that as immaterial and incompetent.

The Court: I will allow it to stand. I do not think it make much difference, one way or the other. He was in the business. Of course he was trying to sell his goods.

Q. Now, Mr. Waddell, in your efforts to dispose of your product, did you at any time ever come in contact with a concern known as J. H. Somers &
2567 Company? A. Yes.

Q. Where were they located? A. Principal offices were at Cleveland, Ohio. Mines in Michigan.

Q. Did you at any time make sales of powder to that company? A. Yes, I sold them a few carloads.

Q. Did you continue to sell them powder? A. No.

Q. Was any reason given to you why they did not continue to purchase powder of you? A. Yes.

Q. Were those reasons in writing or otherwise?
2568 A. Part of them in writing and part were oral.

Q. What was the part orally?

Mr. Button: We object to that, your Honor. It has not appeared that we ever made any quotation to this concern or had any business dealings with them whatsoever.

The Court: Well, it should appear, Mr. Abbott, as I view it now, that if you want to show that the Buckeye failed to get business, you ought to show that the du Ponts had the business—obtained it.

Mr. Abbott: Well, your Honor says, "du Ponts." I take it that if we show that any of the defendants or co-conspirators——

The Court: Well, of course I speak briefly.

Mr. Abbott: Certainly.

Q. Now, do you know, Mr. Waddell, who obtained the business or had the business of J. H. Somers & Company?

Mr. Button: What do you mean?

Mr. Abbott: I am asking if he knows who sold them powder.

A. Yes.

Q. Who made the sales of powder to them, when you were not able to make them sales? A. Yes. 2570

Q. Now, what concern was it?

Mr. Button: Objected to. It must be hearsay.

The Court: Well, in what period?

Mr. Abbott: During the period from 1903 to 1908, while he endeavored to make sales to that concern of the product of the Buckeye mills.

Mr. Button: That does not give us any information, because we do not know when he made such endeavors.

Mr. Abbott: Very well. I will try and 2571 assist counsel that way.

Q. About what time was it, if you can recall, when you did make such endeavors? A. I called on them in 1904, 1905 and 1906, several times.

Q. Now, will you answer the former question. I will put the question again then. Do you know from whom J. H. Somers & Company purchased their powder during that period you have mentioned, that you made efforts to sell them powder? A. Yes.

Q. Now, who was it? (Objection overruled.) A. Austin Powder Company of Cleveland, O.

Q. Will you now state what occurred between you and any representative of the J. H. Somers

Company, with reference to the purchase of powder—what was said orally?

Q. Then, Mr. Waddell, did you succeed in, or did you continue to make sales to the J. H. Somers Company of Cleveland, Ohio, after the period when you say you sold them a certain quantity?

A. No.

Q. Were any reasons given to you why the J. H. Somers Coal Company could not purchase or continue to purchase powder of you?

2573 Q. Mr. Waddell, do you know what prices were quoted by any other person or any other manufacturer of black blasting powder?

Q. Can you recall what his quotations were?

A. I don't remember the figures now.

The following letters were offered by the plaintiff as exhibits, said offer was objected to on the ground that the same are irrelevant, immaterial and incompetent, and said objection was sustained.

To which ruling the plaintiff's counsel then and there excepted, and said exception

2574 was allowed.

The letters so offered and refused were marked P. 109, 110, 111, 112, 113 and 114, and are as follows, to-wit:

J. H. Somers & Co.
Cleveland, Sept. 10, 1904.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:

Your Mr. R. S. Waddell was here the 5th and promised to send me some samples of your powder.

One or two other large users of powder with their offices in this city have been in to see me in regard to your powder. I have asked them to defer their orders or any changes they would make until after these samples had arrived and we had made a thorough investigation of your ability to turn out the kind of powder we require.

The samples Mr. Waddell had with him were beyond question in regard to quality, etc. Some of these other companies I speak of have no contract for powder consequently you could start to doing 2576
business with them at once. It is a little different with us; we are tied up with a contract for the next few months but expect to make some change if we are not taken care of a little better than we have been.

Please forward these samples at once, and oblige,

Yours truly,
J. H. Somers & Co.
Wm. D. Somers
Pur. Agt. 2577

J. H. Somers & Co.

Cleveland January 31, 1905.

Buckeye Powder Company,
Peoria, Ill.

Gentlemen:

We have yours of the 28th inst., and in reply will state our present contract does not expire until March. It might be well for you to take this matter up with us at that time.

Your statement that your powder is "excelled by none" must be correct, as we have heard several parties speak well of your product, and we have a set of your samples, which also speak well for themselves.

We use very little Single F. powder. In Michigan we use only FF. Our three mines in this territory have used about 6,000 kegs of F F since October 1st. When Mr. Waddell was in Cleveland he stated your mill was either well supplied with F or
2579 FF, the writer does not remember which.

We have been informed that you have been very successful in your new enterprise, and we are very glad you have met with this success, which no doubt, is due you.

Yours very truly,
J. H.Somers & Co.
Wm. D. Somers
Pur. Agt.

2580 J. H. Somers & Co.

Cleveland March 8, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:—

We have yours of the 3rd inst. with reference to furnishing powder for our Michigan properties, and note what you say in regard to Mr. Steven Corvin, as being your agent. You have failed to quote us prices on powder, and we would ask you to kindly take this matter up at once and give us your best price delivered, St. Charles, Mich.

We have purchased 7,200 kegs of FF powder since October 1st for these properties and you can tell by these figures about how much we will use per year especially as the coal business in this particular district last winter was not very good.

We might say in conclusion that we expect to buy powder a little cheaper this year than last, and this business, no doubt, will be yours if you quote the right price.

Yours very truly

J. H. Somers & Co. 2582

Wm. D. Somers Pur. Agt.

J. H. Somers & Co.

Cleveland March 25, 1905.

The Buckeye Powder Co.
Peoria, Ill.

Gentlemen:

We have yours of the 23rd inst. with reference to furnishing powder for our Michigan mines. We 2583
are sorry to state that your price quoted several days ago did not meet favor, and as you said you can meet any price that is named we will wait until you make another quotation before we place this business.

We have a much better price than the one you have quoted and while we are very anxious to give our friend Mr. Corvin this business, yet we cannot see our way clear to pay a higher price for your powder than we would have to pay for the powder we have been using in the past.

Yours Very truly,

J. H. Somers & Co.

Wm. D. Somers

Pur. Agt.

2584 *R. S. Waddell—Direct*

J. H. Somers & Co.

Cleveland, April 15, 1905.

The Buckeye Powder Company,
Peoria, Ill.

Gentlemen:—

We are a little late in acknowledging receipt of
2585 your quotation of March 31st, however, we have been thinking the matter over and have been in constant correspondence with our superintendent at St. Charles in regard to the matter.

In your letter you state if any Powder Company made us a better price than 1.05 delivered they were entitled to the business. We have the better price all right—same being $1.02-½, but we have not decided definitely in regard to the Michigan business. As we use a great deal of powder and have always been well taken care of we want to know positively if we can get powder promptly after we have placed
2586 our order for the same.

We have been signed up for sometime for our powder in Ohio, and have included the Michigan properties in this contract in a way that we can purchase powder from the same company we purchase our Ohio powder providing we do not give you the business.

We cannot give you any definite information on this matter until our superintendent has time to render his decision.

Yours very truly,

J. H. Somers & Co.,
Wm. D. Somers,
Pur. Agt.

J. H. Somers & Co.

Cleveland,

Aug. 23, 1905.

Buckeye Powder Co.,
Peoria, Ill.

Gentlemen:—

We herewith enclose our order #1248 for one carload of FF blasting powder, price to be $1.02-½ 2588
delivered as per your letter of Aug. 21st. You no doubt have been advised by Mr. Corvin that we are buying our powder for $1.00 per keg at the present time. We are willing to pay you 2-½ per keg on this order as we are anxious to give your powder a trial.

Yours truly,
J. H. Somers Coal Co.
Wm. D. Somers,
Pur. Agt.

Q. Did you ever have any dealings at any time 2589
with the Indiana Bituminous Company with reference to making sales of powder to them? A. Yes, sir.

Q. Did you succeed in making sales? A. Yes, sir.

Q. Did you continue to make sales? A. A number of carloads; yes, sir.

Q. Did you at any time cease to make sales? A. I did.

Q. What was the reason, if you know, why you did not continue to make sales?

Mr. Button: We object.

The Court: Keeping within the ruling, you may answer.

A. My price was too high.

Q. State what your price was? A. My recollection is that I began at $1.10, and went down as low as $1, and then I lost the business.

Q. Now, the Weverly Coal Mining Company of Kansas City; did you have any business with them? Did you try to sell them any powder? A. Yes, I sold them.

Q. Did you continue to make sales to them. (Objection overruled.) A. No.

2591 Q. What was the reason, if you know, why you were not able to continue making sales? (Objection overruled.) A. My price was too high.

Q. Do you remember what your price was? A. I don't recall it.

Q. The Morgan Valley Coal Company. The Morgan Valley Coal Company of Ohio, did you at any time endeavor to make sales to that company? A. Yes.

Q. Did you succeed? A. I don't recollect.

Q. The Rombauer Coal Company of Missouri, did you make any effort to sell to them? A. Yes.

2592 Q. Did you succeed? A. No.

Q. What was the reason that you did not succeed, if you know? (Objection overruled.) A. They were under contract.

Q. Now, Donk Brothers Coal & Coke Company. Did you have any business with that company? A. Yes.

Q. Did you sell them any powder at any time? A. Yes, about fifteen to seventeen thousand kegs.

Q. Did you at any time cease to sell them powder? A. Yes.

Q. Do you know the reason why you did not continue to sell them powder? (Objection overruled.) A. My price was too high.

Q. Can you recall what your price was? A. It

began at $1.05; then went to $1.02, and to $1, and I lost the business at $1.

Q. The Sangamon Coal & Coal Company of Springfield, Ill. Did you have any—did you at any time sell them any powder, or make any effort to? A. Yes.

Q. Did you succeed in selling? A. Yes, I sold them two carloads and small lots.

Q. Did you continue to sell? A. No.

Q. What, if any reason, if you know, why you lost—why you ceased to continue to sell? (Objection overruled.) 2594

Q. What claim was made to you—what representation was made to you for giving a reason for discontinuing to purchase powder of you further by the Sangamon Coal Company? A. My price was too high, and the miners—a part of them—did not like my powder.

Q. The Astoria & Woodland Coal Company. Did you at any time make any effort to sell powder to those people? A. I did.

Q. Did you succeed? A. Yes. 2595

Q. How much powder did you sell them? A. They bought in small lots. I don't know the total quantity. Sold them for several months.

Q. After that you ceased to sell them? A. Yes.

Q. Were any reasons given to you—any representations made to you by the Astoria Woodland Coal Company, as to their reasons for not wishing to continue? A. Yes.

Q. What were those reasons? (Objection overruled.) A. The price was too high.

Q. What was the price that you sold your powder at to them, if you can recall? A. I don't recall.

Q. Now, the Canton Union Coal Company of Canton, Ill. Did you at any time make any effort

to sell powder to the Canton Union Coal Company? A. Yes.

Q. Did you succeed? A. Yes.

Q. How much powder did you sell them? A. Quite a quantity, in small lots.

Q. Did you continue to sell them? A. No.

Q. What, if any, representations were made to you by any person connected with that company, giving their reason why they would not continue to purchase powder of you? A. My price was too
2597 high.

Q. What was the price that you offered for your coal? A. I don't recall the figures, without reference to the books. (Objection overruled.)

Q. Now, the Simmons Coal Company, of Canton, Illinois. Did you at any time sell them powder? A. Yes.

Q. Did you continue to sell them powder? A. No.

Q. How much powder did you sell them? A. I think two or three small lots.

2598 Q. What, if any, reason was given why they did not continue to purchase powder of you? (Objection overruled.) A. They were under contract to others.

Q. What was your price, if you recall? A. I don't remember the price.

Q. Reeves & Galloway. Did you at any time sell them powder? A. Yes.

Q. Did you continue to sell them powder? A. No.

Q. What, if any reason, was given to you by the members of that company for discontinuing the purchase of powder? A. My price was too high.

Q. What price was it, can you recall? A. No, I do not.

Q. The Clark Coal & Coke Company of Peoria,

Ill. Did you at any time endeavor to sell powder to that company? A. Yes.

Q. Did you succeed? A. Yes.

Q. How much powder did you sell them? A. A total of less than 500 kegs.

Q. By the way, who was president of that company? A. Horace Clark.

Q. Did he sustain any relation to the Buckeye Powder Company? A. He was a stockholder.

Q. Was any reason given to you by Mr. Clark, or any other person in connection with the Clark 2600
Coal & Coke Company, for discontinuing the purchase of powder from you? (Objection overruled.) A. Yes.

Q. What reasons were those? A. Miners refused to use the powder.

Q. The Sunnyside Fuel Company, of Cuba, Ill. Did you at any time sell powder to that company? A. Yes.

Q. Did you continue to sell powder to them? A. No.

Q. Was at any time any reason given by them why you did not continue to sell powder to them? 2601
(Objection sustained.)

Mr. Button: Now, one moment, now your Honor, it is evident that he cannot include all the consumers of powder in the country in this same question. It seems to me it is prejudicial in this case without showing any connection of the defendants with this trade. To say that he went to this, that and the other person and they refused to buy powder of him because his price is too high, I don't see what possible connection it has with the defendants here. It has no connection. I don't see why it should be in and we again object. I don't know of anything that con-

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nects the defendants with any of these transactions.

The Court: Of course, if it does not connect with the defendants in either one or the other issues raised in this case, it is not pertinent.

Mr. Button: We don't know any testimony that connects it.

The Court: You see, the ruling began, Mr. Abbott, in those cases where there was evi-
2603 dence that the duPonts had furnished the powder. Now, as you extend this, if you get beyond anything where you can connect the defendants or any of their alleged co-conspirators with the sales, why, of course, the testimony is irrelevant.

Q. Mr. Waddell, you heard the testimony of Mr. William Coyne, who was on the stand the other day? A. Yes.

Q. Do you know anything about a certain list that he gave at that time which referred to certain
2604 competitors of the du Pont Powder Company, covering a period during the years 1903 to 1908? A. I think I remember it.

Q. I call your attention, Mr. Waddell, to the Senior Powder Company, and I will ask you to state what the facts are, so far as you know, with reference to that company being an independent competitor in the field during the period mentioned there? A. So far as I know it is.

Q. Has it been during the entire period? A. I think so.

Q. Now, do you know anything about the district within which the Senior Powder Company operated and sold its powder? A. Yes, sir.

Q. Do you know any of the officers or managers

of the Senior Powder Company? A. Yes; all of them.

Q. Did you have any information concerning the business of that company in any way? A. Yes.

Q. Are there any other plants there, Mr. Waddell, that you have any information of that kind concerning? A. The Western Powder Manufacturing Company, for the year 1908.

Q. For how long a period? A. Well, it is for the year 1908.

Q. Does it take the whole year of 1908? A. No, 2606
sir. They only operated from October 10th to December 31st of that year.

Q. You have that knowledge first hand? A. Yes, sir.

Q. Or through somebody else? Are the figures stated here correct, so far as that company goes? A. The figures given by Mr. Olin are the correct figures.

Q. Now, you may lay those to one side. I may ask you to refer to them again. In regard to the other two sheets, what are they? A. Dynamite capacities for the years 1903 to 1908, inclusive. 2607

Q. Have you any knowledge of any of those plants and the capacity and output of plants that are indicated upon those two sheets, any of them? A. Only in a general way.

Q. Very well. Lay that to one side. Now, I call your attention to Plaintiff's Exhibit 1219, and ask you to state whether you have examined that exhibit. (Paper was handed to the witness.) A. Yes, sir; I have looked this over.

Q. Will you state if you have any knowledge of the conditions which obtained during 1903 and 1908 which affected the price of blasting powder in the various districts that are indicated upon this exhibit 1219, especially with reference to the existence of competitive plants? A. Yes.

Q. State what the facts were so far as competition was concerned in the district known as Marquette.

A. I know the Marquette field pretty well. I certainly know the competitive conditions there.

Q. I beg your pardon? A. I certainly know the competitive conditions there.

Q. How did you obtain the knowledge that you have regarding the conditions in the Marquette district? A. From a general knowledge obtained dur-
2609 ing a number of years, in knowing what the production was in that field, what mills were located there, what mills could supply it at reasonable freight rates, and what mills supplied the trade generally in that field.

Q. How about transportation conditions, do you know about those? A. Yes, sir. I came in contact with it and visited the fields myself as a salesman.

Q. Now, in order to save time, Mr. Waddell, I am going to ask you a general question with reference to each one of the districts that are indicated
2610 here. There are upon this sheet shown the Marquette district, the Boston district, the New York district, Philadelphia district, the Hazelton district, the Pittsburgh district, the Huntington district, the San Francisco district, the Cincinnati district, the Nashville district, the Birmingham district, the St. Louis district, the Chicago district and the Denver district and the Duluth district. A. Yes, sir.

Q. Now, as to those districts, as to each one of those districts, I will ask you whether or not you have knowledge of the competitive conditions which prevailed during the years 1903 to 1908, with respect to the location of plants, particularly? A. I have.

Q. Have you knowledge of any other competitive

condition that prevailed during that period, in each of those districts? A. I know from what source of supply the powder was drawn to satisfy each district. I knew about what the trade was, and I knew, of course, the distribution of trade as between the general powder companies for a district.

Q. How did you acquire that information? From what souce did you obtain your knowledge? A. As general sales agent at Wilmington and since then in contact with the trade. 2612

Q. Referring again, then, Mr. Waddell, to the Marquette district, I would ask you to state what were the conditions in the Marquette district during the period from 1903 to 1908, with reference to the location of plants, transportation facilities and other competitive conditions?

By Mr. Button:

Q. Well, when were you in that district, Mr. Waddell, during the period in question? A. I was there in the fall of 1903; during 1904, 1905, 1906, 1907, 1908 and 1909. 2613

Q. In the fall of each year? A. Not in the fall of each year. I was there during the year.

Q. How many times during each year? A. I think I visited the Mesabe Range on an average of twice a year.

Q. How long did you stay on these visits? A. It usually took me three days to cover the Mesabe Range, visiting all of the mining points.

Q. Were you there for the purpose of selling powder? A. Yes.

Q. What kind of powder were you selling? A. Buckeye.

Q. Black blasting powder? A. Black blasting powder.

Q. How many mines were there there that you visited? A. I think in the Mesabe Range there were about—well, they varied—60 to 80 mines, very large ones. Most of them were controlled by the United States Steel and by——

Q. What is the principal explosive used by those mines? A. Dynamite.

Q. Very little black powder used? A. Very little, yes. Not very little, but as compared with dynamite. There is more dynamite used.

2615 Q. Deliveries there are made largely by wagon, are they not, as far as powder goes? A. I delivered in carloads when I sold.

Q. Well, how many customers did you have in that district? A. I had three.

Q. Did you ever—three altogether during these years? A. Altogether, yes. I was not able to compete up there.

Q. Then any knowledge you have with regard to conditions up there must be largely from what you were told on these visits, must it not? A. No.

2616 I knew the trade years before. I have had a general knowledge of the trade for years.

Q. But during this period was not your knowledge gained from what these people told you whom you visited? A. No. Part in that respect, perhaps, but I knew what they were using—what powder they were using, and about the quantity they were taking, and I knew what they were paying, and I knew I did not sell them.

Q. Very good. You knew from what they told you. You did not see them use all their powder, did you? A. No.

Q. Therefore, knowledge in these regards as to what they were doing, was from what they told you on those visits, was it not? A. No; I had a general knowledge of the business that you get

from contact with trade, the same as any salesman would get.

Q. Certainly. The salesman gets ordinarily what he is told, does he not, when he makes those visits? A. No, he uses his common sense.

Q. So you are testifying from your common sense on this proposition? A. General knowledge gained from all sources, yes.

Q. But your knowledge is based then on common sense and on what these consumers told you? A. Yes. 2618

Q. What other sources of information? A. Well, I had a complete list of the trade when I visited there. I went first to Hibbing, Minn.

Q. Was that in this district? A. How is that?

Q. Was that in this district? A. Yes, it is supplied from the Lake Superior Powder Mills, which are located at Marquette.

Q. You say you had a list of the trade. That simply gave you information as to where the various mines were located, did it not? A. Yes; then I called on the mines.

Q. Very good. Then, that would not give you 2619 much information as to competitive conditions, would it? A. Well, I knew the Lake Superior Powder Company——

Q. Won't you just answer the question, whether that list gave you any information as to competitive conditions? A. Yes, it contributed to the general information that I had.

Q. That is, it would tell you where these mines were, and that was all? A. Yes, and that they were consumers.

Q. Then you would go to a mine? A. Yes.

Q. And try to sell them powder? A. Yes.

Q. And they would tell you this, that and the other thing, would they not? A. Generally we talked of the conditions of the trade.

Q. And then you would either sell or not, and come home? A. I would quote my price, and if it was not satisfactory I did not get the business, did not get the order.

Q. Very good; then terms, these three customers you had, can you name them? A. I can name one, Stevenson Iron Mining Company.

Q. How much did you sell that concern? A. I think I sold two carloads. I know I sold them 1,000 kegs; I think I perhaps sold them more.

2621 Q. That was during the whole period? A. Yes.

Q. Cannot you remember the other two customers? A. They were contracting companies; no, I can do it by reference to the books.

Q. Can you remember how much you sold the other people? A. The other people?

Q. The other two? A. I think a carload each.

Q. So altogether in five or six years you sold four carloads? A. Yes.

Mr. Button: We do not object to the first two inquiries; strike out the other, competi-

2622 tive conditions.

The Court: (To the witness:) Take the first two, so as to keep the testimony within control.

The Witness: What are those two first?

The Court: Location and transportation facilities.

The Witness: The nearest plants located to the Mesabe Range, or what was known as the Marquette district, was the Lake Superior Powder Company at Marquette in the Northern peninsula of Michigan. There were no other plants that contributed or that could reach that field, except the Mooar, Iowa, plant of du Pont.

Mr. Button: We object to his stating anything except the location of these plants, your Honor.

The Witness: The Mooar, Iowa, plant of du Ponts could compete.

Mr. Button: I understand the question to be the location of these plants—where were they?

The Court: (To the witness) Just give the location of those plants and the transportation facilities. 2624

The Witness: Pleasant Prairie, Wis., Buckeye.

By Mr. Abbott:

Q. Where was the Mooar, Iowa, plant located? A. At Mooar, Iowa.

Q. How far away was that from the Mesabe Range or this Marquette district? A. Over 300 miles; possibly 400 miles. I do not know the exact distance.

Q. How far away was the Pleasant Prairie 2625
plant? A. Well, I have not looked up the distance. I should think 250 miles.

Q. What was the other plant? A. Buckeye.

Q. How far away was that? A. About the same distance as Mooar, Iowa. We were about on a parallel with the trade in the Northern Peninsula of Michigan, the copper mines and the iron mines on the Mesabe Range.

Q. Now, you say about the same distance. Do you mean with respect to transportation facilities? A. Yes.

Q. Not merely an air line distance? A. No.

Q. Were there any other conditions that you know of in that district, which affected the competitive situation? (Objection overruled.)

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The Court (to the witness): The question is whether you know of any.

A. Yes, I do.

Q. Well, state what they are? A. I know the Lake Superior Mills are located right in the heart of a mine district, in close contact with it—copper mines and other mines right in the locality of the mills that could be supplied from there at very low cost of transportation. They have vastly the ad-

2627 vantage over any outside competitor.

Q. Now, any other conditions that you care to mention in that connection? (Objection overruled.) A. Only the advantage in favor of the Lake Superior Powder Company of long time in business and long connection and long supply of that trade.

Q. Now, take the Boston district. What were the competitive conditions affecting the Boston District during the period from 1903 to 1908, with respect to location of plants and transportation facil-

2628 ities?

A. You mean competitive plants of the du Pont Company?

Q. State the plants, giving the names of the plants located in the Boston district, or which supplied powder to the Boston district during this period? A. Wilmington, Delaware; Wayne, New Jersey; Schagticoke, New York; Hazardville, Conn., and Boston, Mass.

Q. Was there a plant located at Boston? A. No. I withdraw Boston. Boston does not make any blasting powder. A plant near Portland, Maine.

Q. Do you know the name of that plant? A. The Oriental. Those are all the plants in that field, excepting there may have been some powder made at the other plants of Laflin & Rand, in New Jersey.

Q. Can you recall the names of those other plants? A. They had a plant called the Orange plant, where they made Orange powder, Orange rifle. I don't think they made any blasting powder anywhere excepting at Wayne, New Jersey, and Schagticoke.

Q. Take the New York district. What were the conditions there, the conditions that obtained in that district with respect to competitive plants and also railroad transportation facilities?

2630

Mr. Button: We object, your Honor.

Mr. Abbott: Strike out the word "competitive." I see what counsel is driving at. I withdraw that word.

A. The only plants that could compete in the New York district are the ones that I named.

Q. Give the names of the plants? A. Exactly the same as I have given for Boston, with the exception of the one plant at Portland, Maine. The Portland, Maine, plant would not supply ———. Could not reach the New York market. 2631

Q. Were there any other conditions in the New York district that affected the prices of black blasting powder?

Mr. Button: We object to that.

Q. In that district?

The Court: If he knows.

Q. If you know. A. No, sir; I don't know of any of them.

Q. I will ask you that same question with reference to the Boston district? A. There were none that I knew of.

Q. Now, the Philadelphia district, the same questions that I have propounded to you heretofore with reference to the other two districts, concerning plants and transportation facilities? A. Plants that could compete in the Philadelphia district——

Q. Don't use the word "compete." State what the plants were? A. Competitive plants in the Philadelphia district were Wilmington, Delaware; Brandywine mills, Wayne, New Jersey; and any other plants of the Laflin & Rand Company in New
2633 Jersey that may make blasting powder.

Q. Can you call over those names? I would like to identify them as nearly as I may with the exhibit, if you have them? A. If I refresh my memory. In the Philadelphia district I deem Wilmington, Dela.; Stores Junction, Pa.; Consumers' plant, Farmingdale, N. J.; Ferndale, Pa.; Moosic, Pa.; Shenandoah, Preb Station, Pa.; Wayne, N. J.; Tamaqua, Penn.; Wopwallapen.

Q. Are there any on the succeeding identification with reference to giving a list of independent plants
2634 that supply that district? The succeeding sheet? A. It appears to be dynamite. Oh, black powder, yes. Connell, at Treverton, Pa.; Cressona, Pa.; mill at White Haven, Pa.; Rockdale, near York, Pa., located at Hoffmanville. And those depend on what the outline of the Philadelphia district would be, how far up into Pennsylvania it would extend. All of these plants could not reach Philadelphia on a fair freight rate. The powder in the Philadelphia District is not consumed in the City of Philadelphia, but mainly in the quarries.

. . . Mr. Button: Well, if your Honor please, I think we had better get through with the location of the plants before a summary is given.

The Court: Yes.

By Mr. Abbott:

Q. Take the Hazelton plant, the Hazelton District, do you know anything about any conditions that prevailed during the years 1903 to 1908 there, with respect to the location of plants and transportation facilities? A. All of the plants located in Central Pennsylvania in the anthracite coal field could compete in that district.

Q. Were those plants included in the names which you have just read as being in the Philadelphia district, or were there others? A. There were others in that district that had local trade. 2636

Q. Did it include the names you have read in the Philadelphia district? A. No, sir. Not all the same kind.

Q. I would like to have you name then what plants located in the Hazelton district could supply powder in that district, to consumers of black blasting powder in that district. In other words, that could compete for the business of any particular customer at that time.

A. Conemaugh, at Seward, Pa.; Consumers, Stores Junction, Pa.; Enterprise, Gracedale, Pa.; Ferndale, Ferndale, Pa.; Moosic, Moosic, Pa.; Oliver, Lauren Run, Pa.; Rushdale, Jermyn, Pa.; Shenandoah, Prebs Station, Pa.; Tamaqua, Tamaqua, Pa.; Wopwallapen, Wopwallapen, Pa. And in a portion of the district could be reached by Farmingdale, Farmingdale, N. J.; Rosendale, at Rosendale, N. Y., and Wayne, at Wayne, N. J. The other list, in the other list, Black Diamond Powder Company, Hauk Station, Pa. 2637

Q. What list are you reading from now? A. The competing companies that are competitors of the du Pont. Connell, Treverton, Pa.; Cressona, Cressona, Pa.; Lakeside, Mahanoy Junction, Locust

Mountain, Prebs Station, Pa.; Lofty, at Lofty, Pa.; Miller, at White Haven, Pa.; Nuremburg, at Tomhicken, Pa.; O'Hare, at Prebs Station, Pa.; Pennsylvania, at Brandyville, Pa.; Roberts, at Prebs Station; Rockdale, at Hoffmanville, Pa.; Shamokin, at Shamokin, Pa.; Standard, at Horal, Pa.; Tomhicken, Tomhicken, Pa.

Q. Were there any other conditions——

Mr. Button: Is that the end? That was
2639 all?

A. That was all that could compete.

By Mr. Abbott:

Q. Were there any other conditions obtaining during the period from 1903 to 1908, inclusive, in the Hazleton District which affected the price of black blasting powder. (Objection overruled.) A. All of the mills in the Hazleton district have always, the ones I have known in the trade, and that is a great many years, have made a
2640 very inferior grade of powder. It is used in that locality, and is mainly marketed by wagon and distributed to the mines in that way. I never knew any of the powder shipped out of that district, Hazleton district, excepting a little by the Miller Powder Company, and one or two carloads from Wopwallapen that was shipped to me, and that I shipped to the west, to the other states. The powder is lightly pressed and is not glazed thoroughly, is improperly dried, not well made; does not keep well, and is unfit for marketing in the Western States, where a very high grade of powder is demanded. The trade of that locality is local. The outside powder companies making higher grade powders, do not ship in there. A better condition

obtains in the Scranton district, where a higher grade of powder is used.

Q. To save time, although the Scranton District is the last one here, I will inquire what you know about the Scranton District so far as the location of plants is concerned, the transportation facilities, during the period 1903 to 1908? A. The same plants as I have mentioned to the Hazleton District, would compete in there, would supply the trade of the Scranton District, but there would be some of them that would not seek trade there, for some of these plants are very small and supply local trade. 2642

Q. Specify those plants, if you please? A. I would have to refresh my memory from this.

Q. Yes? A. I know what they are but——

Q. I would like to have you use that document that you have——

A. Yes. I sent men in the district who reported to me from Wilmington, and I went into the district myself. I have been over the field.

2643

By Mr. Button:

Q. Were you there between 1903 and 1908? A. I was there during the fall of 1903. I made a trip through the district. I was at Shamokin, York and Shenandoah, Oliver, called at the different powder mills.

Q. During that visit did you visit the plants of all these some twenty different companies you have mentioned here? A. No, sir; I visited probably—I visited the Rockdale plant, the Shamokin plant, Mr. Mullen, and the Oliver plant, and three or four plants located over the hill from Shenandoah. I have forgotten the names. I think O'Hara was one of them. They are very small plants, just across the mountain [illegible]

Q. I didn't ask you that, Mr. Waddell? A. I visited those plants. I did not go into the details of their operation.

By Mr. Abbott:

Q. Take the Pittsburgh district, what plants were located in the Pittsburgh district so as to be able to supply black blasting powder to that district with respect to the location of the plants and
2645 transportation facilities? A. The Burton Powder Company, Quaker Falls, Pa. The Austin, at Cleveland, Ohio. The Ohio Powder Company at Youngstown. The Oriental at Fairchance. For a small part of the time, the Rand at Fair Chance.

Q. What part of the time did they cover? A. I do not recollect. I think the mills exploded about 1904 or 1905. The Miami Powder Company, at Goes Station. The King and Senior, of Cincinnati. The Phoenix at Kellogg, W. Va. The plant at Horal, Pa.; and at a great disadvantage, some of
2646 the plants in the Hazelton-Scranton district. The older companies all competed there, but at a disadvantage in freight.

Q. Were there any conditions that prevailed that you have any knowledge of during the years 1903 to 1908 in the Pittsburgh district that affected the price of black blasting powder in that district? A. Only the building of the new mills that increased the competitive conditions.

Q. Now, have you given a list of the competitive mills in that district? A. Yes.

Q. I mean the list of competitive mills as set forth on the exhibit there? A. I think I have mentioned all who had reached that district advantageously.

Q. Do you know of any conditions that prevailed

in the Pittsburgh district during the years 1906 and 1907? Was there any difference during those years and during the other years, 1903 to 1908?

Mr. Button: You mean conditions as to the location of the plants?

Mr. Abbott: Yes.

A. No.

Q. Any difference in the matter of railroad facilities during those years? A. No. 2648

Q. Now, take the Huntington district; what were the conditions which obtained during the years 1903 to 1908 with respect to the location of plants and transportation facilities in that district? A. Kings Mills, Senior at Cincinnati. Miami at Goes Station, Ohio. Phoenix. du Pont Mill at Kellogg, W. Va. Nemours Mills of the du Pont Nemours in West Virginia. Burton, Pittsburgh. Rand for a part of the time from Fair Chance.

Q. You may refer to the exhibits, if you desire, informing yourself on that matter. I want to check up with these two exhibits. A. I know the field. 2649 That is my old field. I know the district. I believe that is all that could compete in the Huntington district, which embraced West Virginia and a small portion of Southern Ohio.

Q. Was there any difference in the condition with respect to the location of plants and transportation facilities during the years 1906 and 1907 in that district than what obtained during the other years? A. No, sir.

Q. Now, take the San Francisco district, what were the conditions that obtained from the years 1905 to 1908 in that district, with respect to the location of plants and transportation facilities?

By Mr. Button:

Q. Have you personally examined that district? A. Yes, sir. I built a plant in San Francisco in 1910.

Q. Was that your first examination of the district? A. No, sir. I had been there before. I had been in California before.

Q. When? A. I was there in 1876 or 1878; I was there again in 1893 or 1894. (Objection overruled.)

2651 A. There were two plants in California, supplied all the black blasting powder.

Mr. Button: May we have that stricken out? Here he was in California in 1876, and he is telling us who supplied the blasting powder from 1900 to 1908.

The Court: Fix the location of the plants.

The Witness: Location of the plants?

The Court: Yes.

The Witness: At a point, I don't know the

2652 local station, at a point near Sacramento, the Giant Powder Company, and at—I will have to refer to this list, I guess, to get the California. The California Powder Company, south of San Francisco, Santa Cruz.

By Mr. Abbott:

Q. Santa Cruz? A. Yes, sir.

Q. Take the Cincinnati district, what were the conditions that obtained in the Cincinnati district during the years 1902 and 1908? 1907 is the last price given here, with respect to the location of the plants and transportation facilities? A. Senior and Kings at Cincinnati. Miami at Goes Station. Du Pont at Kellogg, W. Va. Du Pont at Youngs-

town, Ohio. Du Pont at Fair Chance. The Oriental, at Fair Chance, Pa. The Chattanooga Powder Company. Du Pont plant at Ooltewa Junction, Tenn. The Rand plant near Knoxville, Tenn., in the Jellico field, and remotely, the Buckeye at Peoria. The Egyptian at Marion, Ill. Equitable at Alton. Du Pont at Phoenix, Ill. They were the only ones that could reach the Cincinnati district advantageously, and that is the Cincinnati district as I knew it, taking in the States of West Virginia, Kentucky, Ohio, Indiana and a part of Illinois. 2654

Q. Now, take the Nashville district, during the years 1907 and 1908, what were the conditions there with respect to the location of plants and transportation facilities? A. Nashville?

Q. Yes. A. Kings and Senior at Cincinnati. The du Ponts had a mill at Sycamore, near Nashville, which ceased manufacturing, I think, early in 1903.

Q. I am inquiring now, this price list here refers to the years 1907 and 1908, Mr. Waddell. A. 1907 and 1908?

Q. Yes. A. Well, eliminate the Sycamore, Birmingham, Ala., Chattanooga, Tenn., Rand near Knoxville. 2655

Q. Is that all? A. Phoenix, at Phoenix, Ill., and Equitable, could remotely reach the western part of that district.

Q. Take the Birmingham district, what were the conditions in that district from 1905 to 1908, inclusive, in respect to the location of plants and transportations facilities? A. The du Pont at Birmingham, Ala. The du Pont at—Chattonooga Mills at Ooltewah Junction, Tenn.; the Rand plant near Knoxville. That is all.

Q. Take the St. Louis district, what were the conditions which obtained from 1903 to 1908, inclusive, in the St. Louis district with respect to lo-

cation of plants and transportation facilities? A. The Equitable at Alton, Ill. The Phoenix at Phoenix, Ill., the Buckeye at Peoria. The Egyptian at Maron, Ill. The Excelsior, Holmes Park, Mo., and the du Pont Mills at Moore, Iowa.

Q. Was there any difference in the conditions which prevailed in that district during the years 1906 and 1907 from what prevailed in the other years that you have mentioned in respect to the location of plants and transportation facilities?

2657 A. In part of the former years only, the new mills that I mentioned, the Buckeye, which began operation in the fall of 1903, the Egyptian, which began in 1904, and the Excelsior in 1905, I believe, changed the conditions somewhat as to the years that they were not in operation.

Q. Now, take the Chicago district. What were the conditions which obtained in the Chicago district from 1903 to 1908, inclusive, with respect to location of plants and transportation facilities? A. The du Pont plant at Moore, Iowa, Buckeye at

2658 Peoria, du Pont at Pleasant Prairie, Wis.; Burton at Pittsburgh. Miami at Goes Station, Ohio; and also at Thebes, Ill., and I wish to include the Thebes, Ill., plant of the Miami in the St. Louis district.

Q. Is that all? A. I think that is all.

Q. Now, was there any difference in the conditions which prevailed with respect to location of plants and transportation facilities during the years 1906 and 1907 from what prevailed during the other years, 1903, 1904, 1905, 1908? A. Only that the Buckeye did not begin operation until the fall of 1903, and Burton about the beginning of 1905.

Q. Well, during 1906 and 1907, all of these plants were in operation, were they, that you have

indicated? 1906 and 1907? A. Yes. I will also include the Egyptian and Equitable.

Q. In what? A. In the Chicago district.

Q. Now, take the Denver district, what were the conditions that obtained in that district from 1902 to 1908 with respect to the location of plants and transportation facilities? A. Du Pont at Moar, Iowa. Du Pont at the two points in the Kansas, Turk and Pittsburgh. Du Pont at Patterson, Oklahoma. Buckeye remotely at Peoria. Excelsior 2660
at Kansas City. Mills at Holmes Park, Missouri.

Q. Will you state whether or not there was any other condition prevailing with respect to the Denver District, which affected the price of powder in that district, any one year more than another during 1903 to 1908? A. No.

Q. There were no such conditions? A. No such conditions as far as I know.

Q. Now, take the Duluth District. What were the conditions of that district with respect to the location of plants and transportation facilities during the years 1904 to 1908? A. Exactly the same 2661
as would apply to the Marquette District. They were practically the same, as we knew it, only the one supplies the Mesabe Range principally, and the other the Northern Peninsula of Michigan.

Q. I show you Plaintiff's Exhibit 1221, and ask you to look at it and state whether or not you recognize the document? A. Yes; letter from Mr. Coyne of the du Pont Company.

Q. Was this letter received by you? A. It was.

Q. Did you make any answer to that letter? A. I did.

Q. I show you a document and ask you to state whether this is the answer that you made to that letter (handing to witness)? A. It is; my signature.

2662 *R. S. Waddell—Direct*

(Letter offered and received as Plaintiff's Exhibit 1325).

Q. I will ask you to look at the pencil notations on that letter and state whether or not you saw anything about those pencil notations? A. I know Mr. Coyne's signature, is all.

Q. Now, I show you another paper and ask you to look at it and state whether you know what it is? A. Letter from T. C. du Pont, president of the
2663 du Pont Company, to me.

Q. This letter was received by you? A. Yes.

(Letter offered and received as Plaintiff's Exhibit No. 1326.)

Q. Did you make answer to that letter, Mr. Waddell? A. I did.

Q. I show you this paper and ask you to state whether that is your answer? A. That is my reply; my signature. (Objection overruled).

2664

(Letter offered and received as Plaintiff's Exhibit No. 1327).

Q. Do you know when the Indiana Powder Mills were destroyed by an explosion? A. The 14th of October, 1907.

Q. Did you know Mr. Bumstead? A. Yes.

Q. Who was Mr. Bumstead? A. He is the general manager of the Chicago office of the du Pont Company.

Q. During that time? A. I think not at that time. I think he was connected with the Pittsburg office. I do not know the date of his removal from there.

Q. Do you know Mr. W. S. Simpson? A. Yes.

Q. How long have you known him? A. How long?

Q. How long have you known him? A. Personally, for about six years, I think.

Q. Do you know what relation he sustained to the defendant in this case, to the E. I. du Pont de Nemours Powder Company, during the time that you have known him? A. Yes.

Q. What? A. When I first knew him, he was the successor of Mr. Dwinelle, or associated with Mr. Dwinelle, of the advisory counsel of the du Pont 2666
Company.

Q. Mr. Waddell, did you have any correspondence with any officer of the E. I. duPont de Nemours Powder Company previous to this correspondence which has been offered here? A. With one of their representatives; yes.

Q. Who was that representative? A. Mr. Spensley of Terre Haute, who was representing the du Pont Company at the Indiana Mills.

(Plaintiff's Exhibit 1326, read to the jury as follows:

2667

"October 18, 1907. Mr. R. S. Waddell, Peorial, Ills. Dear Sir: I have a letter from Mr. Bumstead this morning, in which he advises me of your kind offer to Mr. Spensely of your services in the unfortunate calamity. Let me assure you we all appreciate your kind thought of us at this time, and I have no doubt that could you have been there at the time, or shortly afterwards, you would have rendered invaluable service. As soon as we heard of the explosion, we started one man from Terre Haute, one man from Chicago, and two from Wilmington. The following day Mr. Alfred du Pont went on the ground. I assume, of course, that soon after the first shock, there was great chaos and confusion, and no doubt you could have been of great

service at the time. I think Mr. Alfred du Pont can take care of things now as they come up very nicely, and his past experience fits him particularly for the job. Let me assure you again we appreciate very much your kind thought of us in tendering your services to Mr. Spensley and sympathy. With kindest regards, I beg to remain, Yours very truly, T. C. du Pont, President."

(Plaintiff's Exhibit 1327, read to the jury as follows):

2669 Peoria, Ills. October 21, 1907. Mr. T. C. du Pont, President, Wilmington, Del. Dear Sir: Your favor of the 18th inst. received. I did not tender my services, although I should have been glad to render any possible aid. The local requirements of Fontanet can best be handled by your own men and outside influences should be avoided and restrained. It occurred to me that there might be a scarcity of powder in Indiana for a week or two, until you could reorganize supplies from other mills, and my offe was intended to cover any tem-

2670 porary requirements from our mills that you might need, to satisfy the more urgent demands of your trade. I was delayed in railroad connection at Terre Haute, from Saturday evening until 9:30 Sunday (yesterday). Did not visit Fontanet and knew nothing about the sad disaster, beyond what I have read in the press. Am glad to know you will not need any temporary aid from us. We have recently helped Egyptian and Equitable to the extent of our ability. Yours truly, R. S. Waddell. P. S.: Will enclose copy to Mr. Spensely, to correct his impression.

(Plaintiff's Exhibit 1221, read to the jury as follows):

Wilmington, Del., October 24, 1907. Mr. R. S. Waddell, President, Buckeye Powder Company, Peoria, Ills. Dear Sir: Would it be possible for you to help us out with some B blasting powder, and if so, at what price f. o. b. mills. Would also like to know what size grains you can furnish, what quantity per month and the number of months you could continue to supply us. Thanking you in advance for your early attention. Yours very truly, E. I. du Pont de Nemours Powder Company, William Coyne, Director of Sales. 2672

(Plaintiff's Exhibit 1325, read to the jury as follows):

William Coyne, Director of Sales, E. I. du Pont de Nemours Powder Company, Wilmington, Del., Dear Sir: Replying to your favor of the 24th inst. it has been the policy of our company for the past year to operate its mills at about 40 per cent capacity, merely enough to fill current unsolicited orders. We had a conference of stockholders this week, and I reported tenders of supplies to your company which were not needed. The question of 2673 ordering materials, increasing the force of workmen, and operating mills to capacity, was deferred for later consideration. At present, we are delinquent on shipments and have no powder of any grain to offer. Yours truly, Buckeye Powder Company, R. S. Waddell, President.

(In pencil, at the foot of the letter): "Mr. W. S. Simpson, please note and return, William Coyne, 10/28. Noted, W. S. S. Our information indicates that he is having trouble in keeping men; not furnishing steady employment, only operating about 3 days per week. Good men won't stay with him, W. S. S."

Cross examination by Mr. Button:

Q. Referring, Mr. Waddell, to the last correspondence which you read in reference to Mr. Coyne's application to the Buckeye Powder Company for some powder, you did offer to Mr. Spenseley, I take it, to furnish the du Ponts with some powder? A. I did.

Q. And then that was on October 21st, 1907? A. Yes.

2675 Q. And Mr. Coyne, on October 24th, 1907, wrote you, asking for some? A. For future supplies, yes.

Q. His language was as follows, was it not: "Would it be possible for you to help us out with some B blasting powder, and if so, at what price f. o. b. mill?" A. That is not all of the letter. That is part of it.

Q. That is part of it? A. Yes.

Q. The rest of it is, "Would also like to know what size grains you can furnish and the number of months you can continue to supply us?" A. Yes.

2676 Q. Now, then, two days later you wrote him that you did not have any to furnish, or had not had any for a year, your letter being, "Replying to your favor of the 24th inst., it has been the policy of our company for the past year to operate its mills about 40 per cent. capacity, merely enough to fill current unsolicited orders"; and then you so stated, did you not? A. Yes, I think so.

Q. You further stated, "At present we are delinquent on shipments and have no powder of any grain to offer"? A. Yes.

Q. That was the condition of affairs, then, at your mill in October, 1907? A. On that date, yes.

Q. On that date? A. On that date that I wrote that letter.

Q. Had not that been the condition for the past

year, at that date, as you stated in this letter? A. No, we had been sometimes 2,000, 3,000—5,000 kegs of powder we had on hand at a time. The next day we would ship out. We had from day to day varying stocks.

Q. But you had been manufacturing merely enough for a year to fill current orders and had solicited no new orders, is that correct? A. Oh, no, that is not correct, in the soliciting of new orders. We constantly solicit new orders.

Q. Did you constantly solicit new orders for the 2678
year prior to October 26th, 1907? A. Yes.

Q. Then your statement in this letter to Mr. William Coyne, to the effect as follows: "Replying to your favor of the 24th instant, it has been the policy of our company for the past year to operate its mills at 40 per cent. capacity, merely enough to fill current unsolicited orders——" Then that statement was not true to Mr. Coyne? A. It was true for the general current business, but we were not seeking or soliciting an extension of our business for the sale of large quantities, running up to 2679
capacity.

Q. Well, then, which was it? Did you solicit orders during that year previous to this date, or did you not? A. Oh, we constantly solicited orders, every day.

Q. Now, won't you answer this question as to whether this statement is correct or not? A. It is correct with my interpretation of it, yes.

Q. Won't you give us your interpretation? A. We solicited orders constantly, every day, for the amount of about 40 per cent. of our total capacity, estimated say at 300,000 kegs; 120,000 kegs a year, 40 per cent. would be.

Q. Is this an interpretation then of the language I have called your attention to here, which is

"Merely enough to fill current unsolicited orders"? A. I am interpreting——

Q. No, you are giving us the condition at your mill. I want your interpretation of the language in this letter. A. I will give it to you.

Q. Very well. A. We were not seeking an extension of our business in the supply of other powder companies with powder. We had already sold the Egyptian Powder Company 6,400 kegs, just prior to this, and Mr. Olin wanted 20,000 kegs. I
2681 declined to supply it. I did not have the working capital at that period to carry it on.

Q. Now, I will read the language to you again, Mr. Waddell—"Replying to your favor of the 24th, it has been the policy of our company for the past year to operate its plants at 40 per cent. capacity merely enough to fill current unsolicited orders." Now, what is your interpretation of that language? A. That was the policy of our company, the policy of our company, just as I stated there for the past year.

2682 Q. Did you mean that you were soliciting orders that you did not intend to fill? A. Oh, no; oh, no.

Q. Did you solicit orders during the previous years? A. We did, and filled them.

Q. Then I ask you again, this statement is not correct that you were making enough merely to fill current unsolicited orders? A. I am stating there what was the policy of the company in the operation of its mills—this policy.

Q. Do you mean to say that you did not intend by this statement to mean that you had only operated your mills at 40 per cent. capacity, for the purpose of filling unsolicited orders? Look at your letter (handing to witness). Is not that what you meant—is not that what you meant Mr. Coyne to understand by it. "It has been the policy"—— A.

It has been the policy—has been the policy of our company for the past year to operate its mills at about 40 per cent. capacity. There is a semicolon; merely enough to fill current unsolicited orders. By that, I mean that we were not seeking an extension of our business. Mr. Coyne's letter asked me to name the number of months that we could continue to supply him, and the quality that we could supply. "We had a conference of stockholders this week, and I reported the tenders of supplies to your company." That sentence there is a little ambiguous. "Which was not needed." That is any supplies which we did not need for our trade, whether or not I could tender it to them. "The question of ordering materials, increasing force of workmen and operating mills to capacity, was deferred for later consideration." The question that I presented to my stockholders was, "Will you put up more money, change the policy of your company, and increase its business," and they said, "No, not for the present; we will defer that." 2684

Q. In other words, you could go on next year making only 40 per cent. and not solicit orders. That is what you meant, was it not? A. No, we solicited orders every day, made by mail and personally. 2685

Q. Then you say the statement that you did solicit orders for a year before this, and the statement in this letter that you were making merely enough to fill those current unsolicited orders—you say those statements are both true, are they? A. That is unsolicited extension of business, yes.

Q. Now, you have produced a number of contracts here, Mr. Waddell, that you say were entered into from time to time by the Buckeye Powder Company. Where did you get these contracts, I mean on this occasion? Have they been here all the time?

A. My impression is I gave those to Mr. Abbott, when he visited Peoria.

Q. When was that? A. Or they might have come with the books in the box, when I shipped it to Trenton. I don't know.

Q. You packed the books and other papers up, did you not, that were sent here? A. Yes, I did.

Q. Well, were these among them? A. I do not recollect what was in the box. I got everything that I thought was required.

2687 Q. Where is the contract with the Deering Coal Company? A. I do not think I have got a contract with the Deering Coal Company.

Q. Did you ever have a contract with the Deering Coal Company? A. I do not think I had. I may have done so, but I do not believe I did.

Q. You have forgotten that incident entirely? A. If I had a contract with them, I have forgotten it.

Q. How large was the trade with the Deering Coal Company? A. Why, I should say that they would take at all of their mines 60,000 kegs a year, I think.

2688 Q. How much of it did you supply? A. We supplied two mines out of 19.

Q. How much powder? A. I think we supplied approximately sixteen or seventeen thousand kegs.

Q. A year? A. During the time that I supplied them. I do not know whether it was a year or not.

Q. Well, have you not any idea as to approximately how long you were selling powder to that concern? A. No; the sales were made by Mr. Miller, John G. Miller of Chicago. He represented us there and they were made through the Chicago office. I am not familiar with that.

Q. And you have no present recollection whatsoever, as to whether you had a contract—a written contract with the Deering Coal Company? A. I may have had. I do not recollect it now.

Q. You have no recollection whatever on the subject? A. No.

Q. You do not recall, then, some matters in relation to that contract was the occasion for you to start the United States Government up in prosecuting and bringing a proceeding against the du Pont Company? A. I do remember that it was not a contract. It was not a question of contract. It was a question of notification that was sent to me, by wire, that a carload of our powder was at Westville, refused. 2690

Q. Just answer the question. A. I am trying to do so. I went to Westville, found the powder had been refused, shipped the carload back to the mill, and I did take action with the Government, and filed a petition with the Department of Justice, asking that suit be brought for the dissolution of the Powder Trust.

Q. You testified in the government suit, did you not, Mr. Waddell? A. Government case, yes.

Q. Do you recollect saying in answer to a question, "State what contract of your was interefered 2691 with by the associated companies," and you stated, "I had a contract with the Deering Coal Company of Chicago, with mines at Danville, Westville and Western Indiana." Do you recollect so testifying? A. I do not recollect. I knew more about it at that time, perhaps, than I do now. That is some five years ago.

Q. Inasmuch as this was the incident which you say started you up against this company, you think you have forgotten whether you had a contract with that concern or not? A. Well, I do not recollect the contract. I may have had one. I know I sold them a lot of powder.

Q. You are sure you recollected it at this date in 1908? A. I did remember it on that occasion.

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Q. Now, then, there must have been a contract, was there not? A. I presume there was.

Q. Where is it? A. I do not know. Possibly Mr. Miller has it.

Q. You kept these contracts altogether, did you not? A. I don't know whether that contract was made by myself or by Mr. Miller.

Q. Did Mr. Miller make some contracts in his own name? A. I do not know that they were made in his name. I know he had an arrangement—con-

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tract sale to the Phillips Fuel Company that we did not have.

Q. Then there might be a lot of contracts that covered the supply of Buckeye powder and tied up the trade, as you say it, which you have not brought here. Mr. Miller has got them, is that it? A. He may have contracted as he did to the Phillips Fuel Company—for 10 carloads or 6 carloads of powder.

Q. I am not asking what he might have done. I am asking if there were not other contracts, tieing up the powder trade of the Buckeye Company, which

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you have not produced here. A. If it was a time contract with Deering——

Q. Please answer the question? A. There could not be a time contract made, unless we would make it at the Buckeye office in Peoria.

Q. Very well. Then Mr. Miller could not have this Deering contract, could he? A. He could have contracted a certain number of carloads, or certain number of thousand of kegs, as a sale.

Q. Now, you know well enough, Mr. Waddell, do you not, that you had a time contract with the Deering Coal Company? A. No; I do not recollect it. I may have had.

Q. Which is it? A. I do not know.

Q. You know further well enough that the du Pont Company did not have that trade, neither

before or after you had it, do you not? A. I know they had it.

Q. You do? A. Yes.

Q. When did they have it? A. The Deering Coal Company was a successor of about four or five other companies.

Q. I did not ask you that. When did the du Pont Company have the trade of the Deering Coal Company? A. Before the Deering Coal Company was formed. They had the mines which the Deering Coal Company was comprised of. 2696

Q. What date? A. What date?

Q. Yes. A. I think the Deering Coal Company was formed about 19—well, I don't know the date —1904 or '05; 1905 probably.

Q. When did you have the trade of the Deering Coal Company? A. I closed the trade of the Deering Coal Company, I think, about February, 1906.

Q. Whereabouts? A. When I shipped that carload that I spoke of there in my testimony, back to Peoria.

Q. By closing, you mean you ended your trade with them, is that it? A. I think that is the last shipment we made to them. They refused to use any more powder. 2697

Q. Did the du Pont Company have the trade after that date? A. Do you want the hearsay? I can——

Q. Do you know anything about it? A. I did not see the kegs. I can tell you what I know, by hearsay.

Q. Then your belief is that they have that trade, is that it? A. Part of it, yes.

Q. Do you not know as a fact that that trade was procured by the Equitable Powder Company and the Egyptian and the United States after you quit? A. No, I do not know that the United States had

any. I know that the Equitable had some. I do not know that the Egyptian had any.

Q. Do you not know as a fact that the du Pont Company did not have any of it, either before or after that date in 1906? A. I know they supplied during 1903 and 1904, a good many of the mines that went into the Deering Coal Company.

Q. I am referring to the period after you ended the contract with the Deering Coal Company, which must have been in 1904, a 2-year contract?

2699 A. I do not know.

Q. Ran up to 1906. After you got the trade, do you not know that it was the Equitable and the Egyptian and the United States that got it away from you? A. No, I know the Equitable got a part of the trade.

Q. And don't you know that the du Pont Company did not get any of it away from you? A. No, I do not know that.

Q. You do not? A. No.

Q. You pretended to know in the Government

2700 suit, did you not, when you testified? A. Yes, I did know. If you will let me tell you——

Q. And then you pretended to tell all about it, yet you only knew something that some one had told you in that suit? A. I got my information from the Deering Coal Company.

Q. You pretended to know it personally in that suit, did you not? A. Yes, I did.

Q. Whereas, all you did know was that some one had told you? A. I thought the Deering Coal Company were good authorities.

Q. Very good. And it was on the basis of that that you represented in that suit, under oath, was it not, that you knew personally about it? A. I answered the questions that were asked me there. I do not know what I stated. If you will show me the question, I will tell you.

Q. You cannot tell that from your recollection, without the books? A. Oh, I cannot remember, what is in those 12 volumes there. I cannot recollect all of it.

Q. Now, you spoke yesterday about some trade that you had had sometime with some concern, who had a mine in Arkansas—Western Powder Company, was it? A. Western Coal Mining Company, I think.

Q. I mean Western Coal Company. Who was the superintendent of that mine with whom you had this interview you have testified to? A. I did not testify to the superintendent—seeing the superintendent.

Q. Some one connected with the mine? A. Mr. D. Simpson, purchasing agent of the company at St. Louis.

Q. Was the interview at St. Louis? A. Yes.

Q. And as I understand the situation, Mr. Simpson put you behind the door somewhere, and you overheard this conversation between Mr. Simpson on the one hand, and your brother, Frederick J. Waddell and Mr. Spicer, on the other, in regard to making a contract for powder? A. Oh, no, this Mr. Simpson did not put me behind the door. He merely mentioned when the cards were presented, "Your brother has sent in a card; do you want to leave, or will you step in the other room?" I said, "Well, I will go in the other room."

Q. Then what did he say? A. I do not know whether he said anything. I walked in the other room.

Q. Then your statement yesterday was not true, was it, when you said he remarked to you, "These people are here and I want you to hear what they are going to say"? A. I think he made that remark.

Q. Therefore, he did put you somewhere where you could hear the proposal, did he not? A. I think he did, yes.

Q. Where is your brother now, Frederick J. Waddell? A. He is general agent of the Keystone National Powder Company at Huntington, W. Va.

Q. Is he spending his time there? A. I do not know what he is doing. I think he is.

Q. Don't you know whether he is there or not? A. I have not been to Huntington in three years.

2705 Q. May be not. Don't you know where your brother, Frederick J. Waddell, is now? A. No, I do not.

Q. You have not any reason to believe that he is not there? A. No, I should think he is there.

Q. Now, you later, I believe, sold some powder to this same concern. When was that? A. That was during 1907, the fall months of 1907. I sold them about 12,000 kegs—12 carloads.

Q. And at what price? A. $1.08½.

Q. Was that for consumption in their Arkansas

2706 mines? A. No, in Southwest Missouri, in the neighborhood of Pittsburgh, Kansas.

Q. How long previous to that time was it you heard this conversation between Mr. Simpson and your brother? A. I should think it was two years before that time.

Q. 1905? A. Possibly in 1905. I do not recall. I know it was in the spring of the year.

Q. Then it must have been the spring of 1905? A. Simpson's contract expired, as I remember, in June or July each year, and it was just prior to the expiration of his contract. Whether it was in 1905 or 1906, I do not recall.

Q. That is a safe date to put it at, but can you tell us just what month and year it was? A. I cannot tell you the year.

Q. Can you tell us whether it was 1905 or '06? A. No, I do not—I think Fred left the employ of the du Pont Company about 1905 or 1906. I do not recollect the year. I was not interested.

Q. Well, you began to sell them powder in 1907, and it must have been, you think, two years prior to that time? A. I should think it was that much.

Q. That would be 1905, would it not? A. I cannot tell you the year. I know about the period in the year that it occurred, but I cannot give you the year. 2708

Q. As I understand it, that interview, whenever it was that you heard the agreement actually made, was that the du Pont Company was going to make a written contract with them for 97½ cents? A. That is the figure they named there.

Q. Did you see the contract signed? A. No, I did not.

Y. You heard it agreed that such a contract should be signed? A. No, I do not think I heard that. I merely heard the figures discussed.

Q. Now, I suppose you wished the Court and 2709 jury to understand by your testimony yesterday, that the du Pont Company closed that contract at 97½ cents, did you not? A. No, I do not want to say that I saw a contract made or signed, or anything else.

Q. Possibly not, but you understood that that was what would have been understood by us all, from what you stated, did you not, yesterday? I hope not.

Q. You had no such idea in view? A. I just gave you the figures that I heard discussed, and whether they made the contract or not, I do not know.

Q. Therefore, as a matter of fact—— A. I advised Mr. Simpson to make the contract. I do not know whether he did or not.

Q. Therefore, as a matter of fact, you do not know whether he ever did make it or not? A. No, I do not. Yes, if you will let me tell you why I know, I can give you that.

Q. Very good. Tell us what you know? A. Mr. Simpson told me he had made contracts regularly with the du Pont Company.

Q. How long did they last, yearly contracts? A. They were annual contracts, I think.

2711 Q. You think this is what he told you. What did he say? A. I do not know that he mentioned the terms, but I know I bid on them from term to term. They may have been for two year terms, but I think one year terms, all of them. I know I put——

Q. I am asking you what Mr. Simpson said to you now about these contracts. You say you know about the du Pont Compnay making contracts with the trade. Now, tell us all you know about it? A. Yes, and Excelsior got part of it.

2712 Q. Cannot you stick to one thing at a time? A. I am telling you who got the trade. Mr. Simpson told me he had made contracts with the Excelsior for a part of his powder, and also contracts with the du Pont Company. Now, I cannot tell you which definite year he made with this or the other company, but I made a bid on his contract at the same time.

Q. That is what he told you at this interview, where you heard the conversation with your brother? A. No, I do not think it was that interview. Sure it was not.

Q. When was that interview? A. I just told you that I cannot give you the year.

Q. You were stating about the interview at which your brother was present. Now, you are telling of a subsequent one. Cannot you tell us when that

was? A. No, sir. I called on Mr. Simpson every time I was in St. Louis, and I think I was there eight or ten times a year, and I never failed to call on him.

Q. Can you tell us how long after this conversation you overheard between your brother and Mr. Simpson it was that Mr. Simpson told you he had a contract with the du Pont Company? A. No, sir; I cannot tell you the time.

Q. Cannot you tell us whether it was within a year? A. No, sir; I do not recall at which particular conversation the question came up. 2714

Q. Do you recall any conversation subsequent to this interview that you had with your brother in which he told you that he had made a contract with the du Pont Company? A. No, sir; I do not.

Q. You do not? A. I do not recall that one.

Q. Then you don't know anything on that subject either directly or from hearsay, as to whether they made a contract? A. Only that Mr. Simpson told me that he had made a contract, at the same time, whether it was that one or a subsequent one I do not know, with the du Pont Company, and he had also contracted with the Excelsior, and I don't know which year it was. 2715

Q. And you cannot tell whether that was a contract previous to this conversation with your brother or subsequent? A. No, sir; I don't know.

Q. Therefore, you know nothing about whether this conversation was effective or not, do you? A. Yes. There was a 97½ cent price came up later. I know enough about it to know that. Mr. Simpson, when he bought those 12,000 kegs of me, kicked like everything at paying $1.08½. He says I am getting my powder at 97½ cents, and I don't feel like paying you $1.08½.

Q. Then you do remember some conversation in

which he said that he had some such contract? A. He didn't say a contract. This was over the wire, long distance phone.

Q. Did he tell you whom he was buying his powder at 97 cents from? A. Getting it from Kansas mills.

Q. Du Pont? A. I don't know whether Excelsior or duPont; he told me he was getting it for 97½ cents, and he didn't like to have his miners hold him up for Buckeye.

2717 Q. Then we can close this incident, can we not, Mr. Waddell, with the conclusion that you did not know anything about whether the duPont Company ever sold that concern powder at 97½ cents or not? A. I only have Mr. Simpson's word that he was paying 97½ cents for the powder, and he did not want to pay me $1.08½.

Q. And you don't know whether it was 97½ cents Excelsior powder or duPont powder or any other powder, do you? A. I don't know what he was getting at that time; I didn't know what he

2718 was getting at that time.

Q. So you did not intend us to draw any inference that the duPont Company was getting the trade away from someone at 97½ cents? A. I don't know whether you did; I know I don't know whether they had that contract or not.

Q. My question was that you didn't want us to draw any inference from your testimony to that effect yesterday, did you? A. I only wanted you to take what I said for exactly what it was worth, and not draw any inferences.

Q. Did you want us to draw that inference yesterday, Mr. Waddell? A. No.

Q. Didn't you know that we would from what you said? A. No; I did not know what you would do.

Q. You did not? A. No.

Q. Have you any idea where any of the correspondence with Mr. Simpson is? A. No, sir. I don't know. I couldn't place it.

Q. You had correspondence with him, did you not? A. Oh, yes. I think with the—at least once a year he would write me asking me if I wanted to bid on his contract.

Q. Didn't you have voluminous correspondence? A. No, sir. The letters—not letters with Mr. Simpson.

Q. Didn't you have quite a good deal of correspondence with him during the periods you were furnishing him powder? A. We didn't furnish him powder. 2720

Q. Just answer the question? A. Just fifteen days. Yes. I passed a lot of letters with Mr. Simpson then.

Q. Are those among the letters that Mr. Abbott has? A. I believe they are. I think that file is here. I think Mr. Abbott may have that. I will be glad to look them up.

Q. Will you kindly produce it if you can find it? A. I will be glad to. 2721

Q. Do you recollect a letter in that file in which you said to Mr. Simpson that his business was so far away that the Buckeye Powder Company was not in position to furnish the trade, and you desired to be relieved from it? A. I certainly do remember that letter, but not in those words. If you will let me give you the version of the letter?

Q. Wait a minute. When did you see the letter last? A. Well, I think a year ago; maybe less than that.

Q. Where was it then? A. Mr. Abbott and I were discussing it, but I don't know whether I kept the letter, or whether I gave it to Mr. Abbott. I think he has it.

Q. Then you think you have it now? A. Yes, sir.

Q. The occasion of writing that letter was the fact, was it not, that Mr. Simpson had made many complaints to the effect that your powder was delayed in shipment, and his miners were kept idle? Was that true? A. Mr. Simpson's letter to me and his telephone message to me was different from what you stated.

2723 Q. Then that was not the occasion of it? A. There were some complaints about ability to furnish powder of one size grade in enormous quantities. He called me and asked how many carloads of 2-F can you ship to-morrow. I said I think I can ship a carload, one thousand kegs of 2-F grade. He said, can't you ship four. I said no; we don't keep in stock four carloads of one size grade. Besides, I said I know you use in the Kansas district nothing but 2-F grade, and we have a very heavy demand for that size grade in Montana. I can furnish you one carload. "How soon,

2724 how quick can you send another?" I said the following day, perhaps. Then he asked, "How fast can you furnish powder?" I said, "What is the press?" He said, "My miners came out on a strike demanding Buckeye powder, and we are shut down in several mines, and I have got to have it. Cannot you give me some powder?" I said, "I don't want the trade, Mr. Simpson, at 64 cents freight rate. I don't want the business. I cannot compete with mills in the Kansas district." I didn't want the business. I took it to help Mr. Simpson out, and I supplied just as little as I could.

Q. Then you make no complaints in regard to losing Mr. Simpson's trade? A. I have not offered any complaint.

Q. Not the slightest? A. Not the slightest.

Q. As a matter of fact, wasn't it true that Mr. Simpson had complained to you about the powder which you had shipped theretofore, and had complained that it had not reached his mines, and that his miners were idle? A. His mines were shut down. His miners struck for Buckeye powder, and I couldn't furnish it in enormous quantities of powder, the 2-F powder, that Mr. Simpson's mines would use.

Q. Were you able to find any of the Simpson correspondence? A. I have had the files searched, 2726
and I hand you (handing counsel) a bunch of letters.

Q. Are these all of the letters? A. All that I can find.

Q. I wish you would mark these for identification only. (Same marked Defendant's Exhibits for Identification, S-1 to S-12, inclusive.) You stated yesterday, Mr. Waddell, that you solicited from time to time all of the business in the State of Illinois and possibly other states. Can you state whether you did that at first, when you first went into the business? A. Yes; I began slowly, accord- 2727
ing to the production that I had, and gradually increased.

Q. And among others you solicited the business that was then being furnished by the du Pont Company? A. I solicited the entire trade, yes, sir.

Q. And what states did that cover? A. Ohio, a small portion of West Virginia, the Kanawha coal district; the state of Michigan, Iowa, Illinois, Indiana, Missouri, was as far as I travelled probably the first year or so.

Q. Well, now, did you solicit that business by letter ordinarily, or personal interview? A. By both means.

Q. And in that regard will you have your corre-

spondence here? A. No; I do not think I would have.

Q. None of it? A. Possibly there may be some of it. I do not know.

Q. Did you write those letters yourself, or did your son write them? A. Both of us wrote.

Q. In your first efforts to get this trade, and in writing your letters to these customers, Mr. Waddell, did you make use of these lists of contracts known as Government's Exhibits No. 17 to 24,
2729 sometimes mentioned as Mr. Moxham's list of contracts? A. I occasionally referred to those for my information.

Q. Then you had that document with you at the time you were beginning to introduce your powder to the trade? A. I had that document from the time that Mr. Moxham gave it to me.

Q. I mean, you know that you had it, and you had it in a place where it was accessible? A. I had it with me all the while.

Q. And at some times you did use it for that
2730 purpose? A. Oh, I referred to it to find out what the conditions were.

Q. And by "find out what the conditions were," I take it you mean the names of the customers, the date of the contract and when it would expire, the price that was being charged, and the consumption, did you not? A. And the rebate.

Q. Well, the rebate is involved in the price, I take it, is it not? A. No; there was a price named and then there was another column for rebates, the contracts carried rebates.

Q. I understand, but to get at the price, you simply substracted the rebate from the price, did you not? A. Yes.

Q. These rebates being in a general way governed by the amount of the consumption? Is that not correct? A. Not always.

Q. Well, as a general proposition that is true, is it not, Mr. Waddell? A. Well, in many instances they were governed that way. That was the intention.

Q. What was your business, Mr. Waddell, immediately before you entered the employ of the Hazard Powder Company, in 1882? A. I had several lines. I was private secretary to W. P. Halladay, of the Ohio Valley National Bank at Peru, Ills. Secretary of the Halladay Works and manager of it, which was a large box and saw mill— 2732
box factory and saw mill and other factories. I was secretary of the Cairo City Flour Company, which was owned by Halladay Brothers.

Q. In 1881? A. During the year 1881 I was secretary of the Cairo City Gas Company. I was secretary of the Illinois Coal & Iron Company, all of the interests owned by Halladay Brothers.

Q. These were interests, were they, that were owned by the same individuals? A. The same firm, same brothers.

Q. When was it that you practiced law, Mr. 2733
Waddell? A. I practiced law from about 1877 to 1880—possibly during the lear 1880.

Q. And where was your office while you were practicing? A. The first year I was at Pomeroy, Ohio. I lived in Middleport, adjacent to Pomeroy. I had offices in both cities. I then removed to Gallipolis, Ohio, and became a partner in the firm of Nash & Waddell. I sold out. I dissolved my partnership with Mr. Nash, I believe, in 1879, and worked alone for a little while.

Q. Now, while you were practicing law, you did some legal business for the Hazard Powder Company, did you not? A. They brought to me an account—an old profit and loss account for collection. I never brought any action on it. I never collected any money on it.

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Q. They consulted you in reference to certain matters, relating to these Gun Powder Trade Associations, did they not? A. Not prior to my entering their employ.

Q. You did not do any legal work for them in that regard, prior to hiring out to them in a commercial capacity? A. None whatever.

Q. You are sure about that? A. I am very sure, until I was employed by them.

2735 Q. I understand your statement to be that you entered the employ of the Hazard Company on February 1st, 1882, is that correct? A. Yes.

Q. And for a few months, seven or eight or nine, you had general employment and then opened the offices at Cincinnati? A. I had general employment more than a year, I think. I think I was in New York, connected with the New York office from February 1st, 1882, until about May 1st, 1883, over a year. I traveled all that while.

Q. You continued in the employ of the Hazard Company down to the time you quit at Wilming-
2736 ton, March 1st, 1903, did you not? A. No, February 2nd, 1903, was the date I left Wilmington.

Q. Now, when did your employment by the du Pont Company begin, in addition to the Hazard? A. I think that was about 1892. I am not right sure of that, but about that time.

Q. And from that date, down to February 2nd, 1903, you were continuously in the employ of the Hazard and the du Ponts, were you not? A. Yes.

Q. Then the Cincinnati office of which you were at the head so long, was begun in 1883, was it? A. 1883.

Q. There had been no general office of the Hazard Company there previously? A. No, they opened a branch office at that time.

Q. Now, had the du Pont Company had a general

office in Cincinnati, prior to 1892, when you entered their employ? A. Yes.

Q. Who had been in charge of that office? A. The one I succeeded was Mr. George W. Schwartz. The man who preceded him was the one I succeeded, Mr. Donahue. He had a joint agency. It was not a branch office then. It was a joint agency. Under my rule it became a branch office of both companies.

Q. Then you took over the du Pont business from Mr. Schwartz? A. Yes.

2738

Q. And you continued in Cincinnati, until the last nine months of your employment by these interests, did you not? A. Nine or ten months. I have forgotten just the time.

Q. Do you remember the exact date when you went to Wilmington, as general sales agent? A. No, I do not. It was in the spring of 1902.

Q. Now, when you first opened this office in Cincinnati for the Hazard Powder Company, what states were embraced in the territory over which you had jurisdiction? A. At the time I went there,

2739

they opened a branch office. Before that it had been a local agency under Mr. Donahue. They gave me Michigan, Indiana, Ohio, West Virginia, a small part of old Virginia, Kentucy, Tennessee, Mississippi, Alabama, Georgia and a part of Illinois, south of a line running east and west from Terre Haute to Quincy, and east of the Illinois Central Railroad, which is the southeastern section of Illinois.

Q. That was quite an extended territory, was it not, Mr. Waddell? A. Yes, it was large.

Q. Comparatively speaking, a tier of states running from the Great Lakes to the Gulf? A. Yes.

Q. Running east through Georgia and Alabama. Did you get into the Carolinas at all? A. No, that was under the eastern office.

Q. And Virginia partly, and West Virginia entirely? A. I think I had seven counties in old Virginia.

Q. Any part of Pennsylvania at any time? A. No.

Q. Later, was there territory added to your office? A. No, later the territory was divided. The Southern states were given to my brother.

Q. I am coming to that Chattanooga office in a moment, but I wish you would state whether, at
2741 any time, you had more states than those which you have already mentioned? A. Another part of Illinois was given to me, temporarily, by the Hazard Company only. I did not represent the du Pont Company in that.

Q. When the du Pont Company employment came in, in 1892, you were always selling the du Pont and Hazard powder in the same territory, were you not? There was no distinction between their territory, was there? I do not know as you get the question. That is, the Hazard territory
2742 which you had charge of, was the same as the du Pont territory, was it not? A. When I took the du Pont office the territory was made the same.

Q. Now, if you will tell us when this Chattanooga territory was formed? A. I do not remember the date. My brother came with me, I think, in the fall of 1882, as a sub-agent. He was running coal mines in West Virginia.

Q. You were in New York then, weren't you? A. I was in New York, but I was, I established agencies throughout the United States for the Hazard. I put him in as agent at Hartford City, W. Va. He served there awhile on commission, ten per cent commission. Later, when I opened the office in Cincinnati, I sent him to Chattanooga and opened an office there as a sub-agency under my office, all

run in my name, or in the name of the Hazard Company.

Q. Can you tell us the dates approximately during which he was acting as your sub-agent at Chattanooga? A. I cannot give you those dates.

Q. Well, was it in the 80's? A. Yes. It was from 1883, I think, up to possibly 1887 I had charge of the whole territory, it may be longer than that. Then he took charge of it.

Q. That is he took charge of the Chattanooga part? A. Of the southern part. He had Tennessee 2744
and the southern States and I retained my own territory in the North.

Q. What territory was embraced in that which he had charge of? A. He had Tennessee, Mississippi, Alabama, Georgia, and Southwest Virginia, and we mutually exchanged territory. He visited a part of Southeastern Kentucky known as the Jellico coal fields, more easily reached from his office than from mine.

Q. And he had Mississippi, didn't he? A. Yes, sir; Mississippi, Alabama, and Georgia. 2745

Q. Now, he operated as your sub-agent for some years and then he was made a branch office manager for the same territory, with his headquarters at Chattanooga, was he not? A. Yes, sir.

Q. Can you tell us that date? A. I cannot give you the date. He was made manager for the Hazard Powder Company there some time later in the 80's, and he was made manager for the du Pont Company, with a branch office at Chattanooga, before I became general agent of the du Pont Company at Cincinnati.

Q. Cannot you tell us approximately when he was running that branch office? A. I know he was running it in 1890, 1891, and 1892, and how long he continued it after that, then I took it over again.

Q. He had it for two or three years, and then they gave it back to you, did they not? A. Oh, he had it longer than two years. Possibly four.

Q. Well, whatever the period was, they eventually gave it back to you? A. Yes. Consolidated it.

Q. And you brought him to Cincinnati then, did you not? A. Yes, sir.

Q. Into your office? A. Yes, sir. Discontinued the Chattanooga office.

2747 Q. So, with the exception of the period of three or four years, you had entire charge of this large territory, did you not? A. Yes, sir.

Q. Do you know how long the Hazard Powder Company had been selling powder throughout that territory when you took up the business in 1883? A. Only by the statements and what I saw at the office.

Q. You found, did you not, in your experience, in selling that powder, that it was well known throughout that district? A. Yes. Fairly well known. It was not—they didn't have very much

2748 trade when I went in.

Q. You established a large trade? A. I did.

Q. How large a force did you have in establishing that trade, Mr. Waddell? A. Well, that varied. The first year I did all the selling and kept the books, and did all the work with a little office boy in Cincinnati.

Q. You said the first. You mean one year? A. The first year I was there; 1883. The business grew, and then I increased my force.

Q. During that first year you travelled then through all of this territory? A. I had travelled the territory before I went into the Cincinnati office.

Q. I dare say, but you did during that year? A. Yes, sir; made occasional trips. I didn't cover the whole field.

Q. And in that business you found the du Pont powder being largely consumed, did you not? A. In certain sections, certain localities they had good trade, and others they did not have any.

Q. Well, after the first year your trade extended to how many men, how many men did you take on? A. I had one travelling man the first year.

Q. Who was he? A. George L. Rood.

Q. That was in 1883? A. That was in 1883. He had been with Mr. Donohue prior to my going to Cincinnati. 2750

Q. Who was Mr. Donohue? A. He was the local agent in Cincinnati for the Hazard and du Pont companies.

Q. Do you know how long prior to that time Mr. George L. Rood had been selling Hazard powder? A. No, sir; I do not.

Q. Some years? A. I have heard, but he was in the plumbing business in Toledo a good while. He had been in and out of the business.

Q. He remained in your employ continuously until 1897, did he not? A. Yes. I think about sixteen years. 2751

Q. At which time he started out and built the Indiana Powder Company's mill, of which we have heard, did he not? A. Yes.

Q. At that time he had had his experience of eighteen years in your office? A. No, sir; not that long quite. Possibly sixteen.

Q. Well, approximately? A. Yes, sir.

Q. That was in 1884. Then how many men did you have after that? A. I think the greatest number of salesmen I ever employed at Cincinnati was two at one time.

Q. Who was the other one? A. After Mr. Rood left, Mr. Alward.

Q. But Rood was there for a long time. During

the period he was there who else did you have? A. Well, two or three little fellows. I had a local sales agent in Cincinnati, who solicited the city only on rifle powder, a man by the name of Small. I had one other man who travelled a little while, didn't make good, and I released him, and he was succeeded by another one. I never employed more than two.

Q. Didn't you have anybody besides Rood, who was of quite long service with you? A. Myself.

2753 Q. Was a man by the name of Mr. Ermston with you? A. Ermston was with the Chattanooga office. He worked for the Cincinnati office I think one year after we consolidated, late in the 90's.

Q. Did you have a man by the name of Hill at that time? A. Hill, he was one of the men that I spoke of as being with us a little while.

Q. Then there was no other man besides Mr. Rood, who was there for any long period of time? A. No, sir.

Q. Except your brother? A. My brother; yes.

2754 Q. He was there most of the time, was he not, either at Chattanooga or Cincinnati? A. Yes; continuously.

Q. How large an office in a clerical way did you have, Mr. Waddell? A. Part of the time when the business grew to be very large, I had two bookkeepers at Cincinnati; one for the Hazard and one for the du Pont books; and we had one bookkeeper at the Chattanooga office. I had two stenographers part of the time; most of the time one. I had a shipping clerk and magazine keepers, draymen, cartmen.

Q. You did a great deal of selling by correspondence, did you not? A. When we had the trade well fixed, we got the orders by mail, but we travelled pretty generally.

Q. What was the business of most of the consumers of black blasting powder in that territory? A. Coal business. Coal operators.

Q. Largely, almost exclusively, used in coal mines, wasn't it? A. And quarries also.

Q. Quarries? A. Yes. Railroad work, immense quantities.

Q. Well, the railroad work is really the only part of the consumption that was not pretty well fixed, wasn't it? By that I mean there would be a coal mine at one certain locality run by a customer, and 2756
he would be a continuous customer of powder, would he not? A. That is right.

Q. Railroad construction, of course, would last for awhile, and then end, would it not, that consumption? A. Yes, it would vary from different parts of the district.

Q. But the largest part of your trade was fixed in this way at those different points, and was practically the same concerns? A. Yes, sir.

Q. To a large extent? A. Yes.

Q. During that long experience of yours you became pretty well acquainted with most of those 2757
operators in the coal business, didn't you, Mr. Waddell? A. I thought I knew them all.

Q. You had frequent personal interviews with them, and came in close personal contact with them? A. Yes.

Q. Is it not true that in selling them powder you found, when you went there, that both the Hazard and the du Pont powders were powders of good reputation all through that district? A. Isn't that true? A. No.

Q. It is not? A. du Pont powder would have a reputation in one locality; Hazard in another, and they would not use du Pont powder in that locality. And the King would have another trade,

and we couldn't put our powder in against King. Miami had trade that they were getting, and we were not known in, we couldn't reach it.

Q. The difference between the Hazard powder and the du Pont powder was quite largely based on a matter of sizing, wasn't it? A. No, sir. I always thought the Hazard was the best powder.

Q. No; but they made a powder that uniformly was of considerably finer grain, didn't they, as a specialty? A. Equivalent grains were about half
2759 the size, half size smaller, the Hazard than du Pont. There was no regularity.

Q. Wasn't it based upon that fact, that some of those consumers preferred the Hazard to the du Pont? A. There might possibly be a few customers in one locality, but that was not the general rule. I have sold Hazard powder in du Pont territory, and I have returned thousands of kegs of it, because it was unsatisfactory; and the same way with du Pont in Hazard territory. Miners would not have it.

2760 Q. Miners are usually rather whimsical on such subjects, aren't they, Mr. Waddell? A. No. I don't think it might be termed whimsical. They have pretty good reasons.

Q. You don't think that they were arbitrary in their views on that subject? Don't they get accustomed to using a certain brand of powder and aren't they very loath to leave it? A. No. The miners as a body are controlled by a very few members of that body, and the balance follow like sheep.

Q. Well, during all the time that you have mentioned, some twenty years back, the powder was sold directly to the mine operator, was it not, and he re-sold it to the miners? Wasn't that the condition? A. For a part of the time that was.

Q. Well, what part did that condition prevail?

A. When we were fighting the King and the Ohio Powder Company during 1883 to 1886, we retailed powder to the miners.

Q. You helped do it? A. My sub-agents did.

Q. Did you do it? A. Not personally, no, sir.

Q. Did you protest against it? A. I didn't have any control over it.

Q. Did you protest against it? A. I don't know that I did formally.

Q. You said nothing about it to your principals? 2762
A. Oh, yes, the principals knew all about it.

Q. I know, but did you say anything to them about it? A. Often discussed it with them.

Q. Did you protest with them? A. These men were commission agents——

Q. Just answer the question. The question is did you protest to your principals about selling powder to the miners? A. It wouldn't do any good.

Q. When you were fighting, as you say, the Ohio and the King powder? A. I did not protest.

Q. Well, outside of some special periods of that 2763
sort, during this entire time, powder was sold to the operators, was it not? A. Yes.

Q. And they resold it to the miners, did they not? A. I think they did.

Q. At a very substantial advance over what the operator had paid the powder company for it, did they not? A. Well, that varied in the different districts, different sections of the country. Some places they had a good profit, and some places they didn't have much.

Q. Well, with very minor exceptions, is it not true that the operators made a very large profit on that transaction? A. That is true in States that are governed by unions.

Q. Wasn't it true in every State of which you

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had jurisdiction out of the Cincinnati office? A. I don't know in every State.

Q. Do you know of any one State in which you sold powder in which it was not true? A. A very large profit? I don't know what the rule would be.

Q. Oh, I will say a profit of from fifty cents to one dollar, twenty-five cents a keg? A. I don't think the profit ever went to one dollar twenty-five cents a keg.

2765 Q. Don't you know of a time when the operators were selling powder to their miners at $2.50 that they were buying at $1.25 extensively? A. No, I don't know that.

Q. You would not say that that was not so in your district, would you? A. I don't know anything about it.

Q. Didn't you know at the time? A. Why, of course I knew at the time what the prices were, but for twenty years I cannot remember all the prices, and variations in different districts.

2766 Q. Well, this proposition of the operator's profit on powder was one that was pretty thoroughly brought to your attention each year, and repeatedly each year during your entire experience in Cincinnati, wasn't it? A. I have always observed that they made a good fair profit.

Q. Wasn't it brought to your attention, too, repeatedly every year while you were in Cincinnati? A. No; I did not have very much to do with consumers when I was selling.

Q. I have not mentioned a union, Mr. Waddell, I am talking of the proposition of selling powder to the operators, and they charging a large profit to the miners. Was not that condition of affairs repeatedly each year brought to your attention while you were running the Cincinnati office? A.

No, it never was brought to my attention what an operator charged a miner for his powder, until they began the agreements between the operators in the unionized states.

Q. What date was that? A. Along in the 90's sometime the unions became of some prominence. I think the first agreement between the operators and miners was perhaps along in the 90's.

Q. Now, while you were working for the Hazard Powder Company, who was the man in authority with that company to whom you reported and 2768
from whom you got your instructions? A. Two.

Q. Well, who were they? A. I got one set of instructions from Mr. William S. Colvin. During the life of Mr. R. L. Wheeler, I think he died about 1889, I got another set of instructions from Mr. Wheeler, who was the head officer.

Q. That is during that period you came in contact with both of those men, did you? A. Yes.

Q. After that? A. After that Mr. Colvin alone of the Hazard.

Q. Down to 1902, when you went to Wilmington? A. Yes, up to the time I went to Wilmington. 2769

Q. Who was the man in authority, with whom you came in contact, so far as the business of the du Pont Powder Company went, from 1892 to 1902? A. One man only.

Q. Who was he? A. Eugene du Pont.

Q. When did he die? A. 1902, in January, I think.

Q. Mr. Colvin retired from the active management of the Hazard Company about 1902, did he not? A. I think about July, 1902.

Q. And at that time both Mr. Eugene du Pont and Mr. Wheeler were dead? A. Yes.

Q. Consequently, the three men with whom you

co-operated, during those twenty years, all antedated the time that Mr. T. C. du Pont and P. F. du Pont came into this business, did they not? A. Well, T. C. du Pont has been in the powder business before that.

Q. He had been running a coal mine down in Kentucky, and had sold a little powder on a commission basis, had he not? A. Yes.

Q. That is what you refer to as his connection with the powder business? A. That is all I know
2771 of.

Q. Barring that incident, is not my statement correct? A. I do not know. I only know that he became active in the business in 1902.

Q. Well, so far as you know, so far as any outward appearance would indicate to you that is true, is it not? A. Yes.

Q. And if that is true, it necessarily follows that you know a great deal more about all of the methods of selling powder, from 1882 to 1902, what was done, what conditions prevailed, and what
2772 the general situation was, than did either of those gentlemen. Is that not true? A. Either of which?

Q. Mr. P. S. or Mr. T. C. du Pont? A. Yes, sir, I think I knew more than they did.

Q. And you were a part of it for twenty years, were you not? A. I was an employee of the company, yes. I never had a dollar interest in the business.

Q. Now, in regard to being an employee, do you mean that you were simply an employee, confined your activities to following literally your instructions and did not occupy any field outside of those specific instructions that were sent to you by one of these three gentlemen whom you have mentioned? Is that what you mean? A. What I mean is that I was a salaried employee, running the busi-

ness of these companies in their names. All of the sales were made for the company, charged on their books. The cash was deposited in the name of the company. I had nothing to do with it, excepting to obey the instructions given me specifically.

Q. Did you confine yourself to obeying the specific instructions that were given you for that twenty years? A. Absolutely.

Q. Did you take any active part in these matters which you have explained for several days on the stand here, in regard to contests against various companies? A. I did what I was instructed to do only. 2774

Q. Nothing else—nothing beyond that? A. Nothing beyond my instructions.

Q. Did you have specific instructions for everything you did in these regards? A. Oh, not for every little detail. My instructions would be often to use my judgment and carry out a line of policy that was given me of what they desired me to do. They checked my books. They checked my accounts and had them audited.

Q. In carrying out the policy, you proved a very effectual instrument, did you not, Mr. Waddell? 2775
A. I thought I earned my salary, yes.

Q. And you did what they told you, and did considerable more, did you not? A. No, I always had their approval.

Q. Did they always give you instructions specifically as to what method you should use to accomplish a particular result? A. Well, you will have to be more definite, for I do not understand what you mean by a particular result.

Q. Killing a company? A. How is that.

Q. Killing a competitor, that will hit it? A. Yes, all general instructions when to make a fight.

Q. And you went them one better, did you not,

Mr. Waddell? A. I never violated my instructions.

Q. You went them one better, did you not? A. No.

Q. You did not? You developed into a very suggestive agent during that twenty years, in regard to competition and customers, did you not, Mr. Waddell? A. I was unfortunate enough to be on the firing line all the time where the independent companies were promoted and the fights conducted.

Q. You made many suggestions, did you not to
2777 Mr. Eugene du Pont and Mr. Colvin and Mr. Wheeler, as to what you thought ought to be done in those conditions? A. When they asked my judgment of the condition, I would give it to them.

Q. Only in response to a request from them? A. I think so. I do not recall any other.

Q. During the twenty years, you have no recollection of any voluntary suggestion being made to your principals on these subjects? A. I do not recall any.

Q. Not one? A. No.

2778 Q. Would you be surprised to find such a suggestion from you unasked for? A. I do not know. I do not recall any. I do not know whether I would be surprised or not.

Q. You stated here several days ago when you were examined in reference to your authority, I think it is, page 1736: "Now, Mr. Waddell, during your representation of the du Pont and Hazard interests at Wilmington, did you at any time exercise any independent authority with reference to such matters as had been committed to your hands by Mr. T. C. du Pont, with reference to the Trade Association?" You answered, "No." "Will you explain where you obtained the authority which you exercised, with reference to the duties that were committed into your hands; how did you proceed

to perform those duties?" You answered, "I knew the compendium of rules governing the apportioning of trade under contract. I knew the working of the powder association and thier methods, that contracts were to be awarded and rebates made, according to a specified quantity that consumers would take, and when application was made to the special committee, it was a question of determining according to the rules that had been established by the association what the Committee should do, and I was governed by those rules and followed them. 2780
Did you or did you not at any time fix any price or terms in any contract, independent of what had been conferred upon you? No, I had no authority for anything of that kind."

By that testimony, Mr. Waddell, you intended us to understand, did you not, that while you were at Wilmington as General Sales Agent, for nine months, you were a mere instrument to these people, to do what they had specifically told you to do. Is that what you intended to imply, and had no independent authority whatsoever on any subject? 2781
A. I had authority to act within the scope of the duties that were given me, but not specific detailed instructions about every little act I committed.

Mr. Taylor: The next question and answer is that very thing. Read the next question and answer. It is only fair to the witness.

Q. "I will ask you whether at any time during the time that you represented the Hazard Powder Company at New York, Cincinnati or Wilmington, you ever of your own independent authority made any price or attempted to perform any duty independently? A. Never." I did not read that question, because it refers to this 20 years preceding, and I

was about to follow my inquiry as to Wilmington, with this preceding period. I do not like to mix them up. Now, confine yourself to the 9 months at Wilmington, did you mean to imply that you had no authority, except that that was specifically given to you, for each occasion by some of these gentlemen? A. I had the authority that was embraced in the detail of general sales agent, and in addition to that such other duties as they asked me to perform.

2783 Q. Now then, referring to this other answer which I have just read, in which you say that during these previous periods you never had authority to make any price, or attempted to perform any duty independently, that embraces your entire service at Cincinnati? You intended it to? A. Yes.

Q. And did you intend us to understand by that, that during that period you had no independent authority? A. None whatever.

Q. And you intended us to understand that you did not make any suggestion to your principals, as

2784 to what they ought to do in these various matters of competition, but strictly confined yourself to the instructions which they gave? Was not that what you intended us to understand by that testimony? A. Oh, no; I would not say that I have never made suggestions or recommendations, or that I had not conferred with my principals.

Q. Do you remember now that you did make suggestions in regard to the treatment of these competitors? A. No; I do not recall any particular suggestion that I made, but I would not exclude suggestions. If I was asked for an opinion, I gave it.

Q. But only under those circumstances, I understand your testimony. Now, my question was as to whether by this question and answer that I have

read to you here, you intended to imply something different from that? A. I did not intend to imply anything beyond the words I used.

Q. Well, you expected us to understand, did you not, that you were simply there, doing what you were told, as you understood, and the purpose of it was, Mr. Waddell, was it not, to divest yourself of any responsibility for anything that was done in these matters during that twenty years? Was not that what you intended by that answer? A. I did not intend anything but just what I said. 2786

Q. Did you intend to divest yourself of any responsibility for the occurrences of that twenty years by that answer? A. I take the responsibility.

Mr. Taylor: I object to this line of questioning. It is a pure matter of argument. No facts are brought forth at all.

The Court: Oh, well, he is the chief witness for the plaintiff. I am inclined to allow considerable latitude. I think this is within the proper examination. You may proceed. 2787

The Witness: What is the question.

(Question repeated.)

A. I did not have any intention beyond just what I said.

Q. I was trying to find out what you meant by what you said, Mr. Waddell, in that regard? A. I meant this: That during my entire service with the Hazard and du Pont companies up to the time I went to Wilmington, the business was conducted by the companies, not by me. I was a mere agent. The books were in the name of the Hazard Powder Company. The money was in the name of the Hazard Powder Company. The bank account was kept in the name of the Hazard and the du Pont Com-

panies. I signed the checks of the Hazard Powder Company, by R. S. Waddell, agent, for the E. I. du Pont de Nemours & Company, by R. S. Waddell, Agent. I remitted to them. I sent each company every month a trial balance of their books at Cincinnati, an account of sales of every keg of powder or pound of powder I sold. The powder came to me, not billed in dollars and cents, but consigned. It was their stock. Their auditor came from New York every year, with my account of
2789 sales and checked over my books. The books of the Hazard Powder Company and the du Pont Company both of them. He checked the bank balances. He went to the bank to confirm it. He counted my stocks in the magazines, and if there were any shortages in the account of the stock, they were charged off. Every price that was ever made, was made by the Hazard Powder Company or the du Pont Company. It went to them in every trial balance, and in every account of sales that was on their books. They audited the books and they gave me a clean balance. They never charged me with a dollar or
2790 a cent that I had sold powder at, at any price that they did not approve. They would give me sometimes latitude. You may go as low on rifle powder in the fight against King—gave me latitude to go down. I would use that latitude. They would not know it until it was reported to them in their account of sales, and they approved it, and I have never had an accusation from the Hazard Company on an account of sales that I rendered to them, and in my final settlement with them, and I handled over ten millions of dollars for those two companies without a defalcation of a cent.

Q. That is about what I understood you wished to have us understand, Mr. Waddell. In other words, you were a passive agent out there and the

responsibility, as I understand it, was entirely in New York and Wilmington; that is what you intended, was it not? A. That is my intent, to say that I was an employee.

Q. During this period of twenty years in which you had no latitude, no real discretion in regard to fixing prices, they were always fixed by Hazard and du Pont Company, I suppose it also includes the period of some years concerning which you have testified in the Government suit that they threw the doors wide open, and gave you discretion 2792
to meet competition at any price you desired? A. I cannot endorse that statement of yours.

Q. You remember so testifying in the government suit, do you not? A. No.

Q. You do not? A. Not to a statement of that kind.

Q. You do not remember testifying that in some of these periods the Hazard and du Pont Companies, or both of them, gave you open authority to meet any price that was made in your district? A. Yes, sir; they did that. They gave me latitude, 2793
as I have said.

Q. That is what you meant by saying a moment ago—about saying they gave you some latitude? A. Some latitude. I could not go below what they gave me, but I had discretion within those figures.

Q. They did not give you an open price then, to meet any competition you came across at any time? A. I think that authority was given to my brother at Chattanooga.

Q. I ask if they gave you such authority? A. I had this authority from Mr. Wheeler, to make a price of 10 cents a keg below the King price to the Cincinnati trade, on rifle powder, and to give a guarantee that this price, being 10 cents below the price of the King Company, should be permanently

10 cents below any price the King Company might make, and that might come within the scope

Q. Was there any such occasion during the '90s? when you had any open authority? A. I think against the Phoenix, the fight against the Phoenix and the Equitable occurred at the same time.

Q. Right there, there was a fight against the Phoenix and Equitable, was there not? A. There was a vigorous one.

2795 Q. Did you so intend to testify on your direct examination? A. I do not know what the question was.

Q. Well, your answers were somewhat ambiguous, in my judgment. It was your intention, was it not, to convey that impression that there was a fight against the Phoenix and the Equitable? A. I do not know whether I was questioned on that subject or not.

Q. Well, you said now that there was such a fight, did you not? A. There was, between 1892 and 1896.

2796 Q. To get back to the question I asked you a few moments ago, which you have not answered, did you or did you not testify in the Government suit, that sometime during the 90's, that you had open authority to meet any price named on blasting powder? A. I do not remember that question, nor I do not remember my answer to it.

Q. Well, if you did answer that you had such authority, was that correct? A. I do not know that it would be correct or not. You will have to give me the question and answer, and the connection in which it was used. I could not be able to testify now.

Q. Cannot you state now whether or not you did have such authority during the 90's? A. I do not remember any special authority during the

90's. That was after Mr. Wheeler's death and they were a little more—I was a little more restricted than I had been prior to that time. There may have been such an instruction. I do not know.

Q. Well, then, you are not entirely sure of the correctness of the statement that you made a few minutes ago, that you submitted every price to Wilmington and New York during your incumbency of that office, and never made one until after you got permission back? A. I never made a price outside of the bounds within which I was author- 2798
ized to go.

Q. I do not think that is an answer to the question. As I recollect, about five minutes ago you testified, giving a resume of your conduct of the Cincinnati office, that there was no occasion upon which you ever had authority to make a price of any sort, except on permission from Wilmington or New York, except also that on one or two occasions they had given you a limit below which you could not go. That is as I understood your testimony. Then that statement is not entirely correct, 2799
is it, Mr. Waddell?

Mr. Taylor: I object to the statement as not embodying the witness's statement a few minutes ago.

The Court. It is in substance, I think, Mr. Waddell did in that answer fix a limit beyond which he had no authority to go, but above that he had authority and he could exercise it without reporting until after it was consummated.

Q. Now, I understand Mr. Waddell to testify he cannot remember whether he had open instructions during 1890, to meet any price named? A. No, I have not said that. I may have had.

2800 Q. Consequently you are not sure of the correctness of your former statement, that you never had authority, except to go down to a certain limit. Is not that correct? A. I never had authority to give powder away or make——

Mr. Button: I move that the answer be stricken out.

The Witness: I never had authority in which I could sell a good rifle powder for
2801 6¼ cents or 5 cents, or anything of that description. There was a reasonable view to take of it. I was in business, selling powder for profit.

Q. You were given instructions to go down to a certain minimum, or you were given some other kind of instructions, Mr. Waddell, and there was a great difference between them. Now, which was it, to go down to a minimum price, or to meet any price you saw fit, which was made by competitors?
2802 A. They varied. I think on one or two occasions I had an open price.

Q. You do think so now? A. I know in the Chattanooga field my brother at Chattanooga who was reporting to me, or was associated with me in the fight against Chattanooga and Birmingham, had authority to meet any price—not to make any price he pleased, but to meet any price made by others and hold his trade.

Q. Then your statement was not correct, that you made a while ago, that you never had authority, except upon permission, and except to go down to a certain minimum? A. There were exceptions. There may have been. I do not recall the circumstances of individual cases. I do not remember.

Q. You organized the Buckeye Powder Company

in 1903, Mr. Waddell? You caused it to be organized yourself, didn't you? A. I did.

Q. You became its president? A. Yes.

Q. And are now? A. Yes, sir.

Q. Continuously have been? A. Yes, sir.

Q. You became its general manager, managed its affairs? A. Head of all of it; yes.

Q. And you still are managing the affairs of this concern? A. Yes, sir.

Q. It does no business now except such as is incident to the settlement of its affairs? A. That is all. 2804

Q. And has not since it sold its plant in 1908? A. That is all. Liquidating.

Q. Who are the other officers? A. R. S. Waddell, Jr., Secretary-Treasurer. The only ones we had.

Q. Wasn't M. C. Waddell an officer at one time? A. Not an officer. He was superintendent of the mills.

Q. Who were the directors? A. The board of directors were R. S. Waddell, R. S. Waddell, Jr., J. C. Hooven, superintendent of the Hooven, Owens, Rensselaer Company, Corliss Engine Works, Hamilton, Ohio; Mr. A. B. Voorhees, Vice-President of the Trust Company of Cincinnati; and Mr. John P. Neals was the local director in Delaware. 2805

Q. Organized under the laws of Delaware? A. Delaware.

Q. Are those gentlemen still the directors? A. Four of them. Mr. Neals has resigned, the local director.

Q. Are they all stockholders? A. All stockholders except Mr. Neals.

Q. Have you stock books and minute books of the corporation in Trenton? A. Yes, sir.

Q. In the adjoining room? A. Yes. I think they are. I am pretty sure they are.

Q. Have you any objection to producing them? A. I have none. It is with the attorneys.

Q. Will you do so? A. Yes.

Q. In the course of your management of this corporation, you assisted your attorneys in preparing the complaint that has been filed in this litigation? A. No; I did not assist in preparing it. I talked the case to them and left it to the lawyers to prepare it.

2807 Q. You gave them the information upon which the complaint is based? A. I furnished them the record in the Government case, which I had, and talked with my attorneys.

Q. Did you read the complaint over after it was formulated and before it was filed and give it your approval? A. No. I was in Europe at the time and it was filed while I was abroad.

Q. You say you never saw it before it was filed? A. No; not the original paper.

2808 Q. Did you see any complaint that was substantially complete before it was filed? A. I saw the amended petition or bill, whatever it is called, before it was filed. You are speaking now of the case we are in here?

Q. Well, did you prepare any of the declarations in any one of these three suits? A. I did not prepare any myself.

Q. Did you see any one of the three before it was filed? A. I should say I think I saw the Hazard bill and probably the Laflin & Rand; I don't remember as to those.

Q. You gave those your approval, I take it? A. I gave the Hazard, I know.

Q. And you saw that prior to the time it was filed, did you not? A. I would not be able to tell. I don't know the date of filing. I don't remember whether it was filed before or after I saw it. I saw the printed copy when it was handed to me by the attorneys, and I don't know the date of it.

Q. Did you answer in your previous testimony that you saw it prior to the time it was filed? A. Really, I don't know the date of the filing.

Q. You so testified? A. I thought I did, and still think so, but maybe I am wrong.

Q. You further said you furnished the data and talked with your attorneys and they made the preparation? A. Yes; that is right.

Q. During the two months—you began to sell powder, as I recollect it, about the last part of October or the first part of November, 1903? A. 2810
Yes, sir.

Q. And you sold some seven or eight thousand kegs, during 1903, and some one hundred eight thousand, wasn't it, during 1904? A. I have forgotten the exact figures.

Q. Something over one hundred thousand? A. Yes; approximately.

Q. During which portion of the year 1904 was the most of that powder sold, Mr. Waddell? A. Most of it was sold between I should think most of it was sold in the Fall of the year when the 2811
trade was the most active.

Q. Could you tell how much, approximately, of that amount you sold in the Spring months and Summer months of 1904? A. No, sir; I could not.

Q. Can you tell us where you sold most of the powder that you sold during that earlier period? A. I think most of it was sold in Illinois, Iowa and Missouri.

Q. You sold out in October, 1908, did you not? A. September.

Q. September or October? A. September 18th, I think.

Q. I show you an exhibit that has been marked for identification and numbered—it is marked Defendant's Exhibit 1242 for Identification. Are

those the signatures of yourself, as president of the Buckeye Powder Company, and your son as treasurer? (Paper was handed to the witness.) A. Yes, sir.

Q. And this is the seal of the corporation, of the Buckeye Company? A. Yes, sir.

Q. What was the original capitalization of the Buckeye Powder Company? A. Seventy-five thousand.

2813 Q. That was paid in at one time? A. Paid in on calls of the board of directors.

Q. In cash? A. In cash.

Q. And when was the rest of that, the last of that seventy-five thousand paid in, can you recollect? A. I don't remember the date. It was during the summer of 1903.

Q. And the capital stock was increased somewhat at a later period? A. Yes; almost immediately.

Q. How much was that increased? A. Twenty-five thousand.

Q. Making $100,000 altogether? A. Yes.

2814 Q. Was it ever increased again? A. We passed a resolution to increase it, but we never issued it.

Q. To what point? A. To two hundred thousand.

Q. When was that? A. I don't remember the date. The resolution in the minute book would show.

Q. Haven't you any approximate recollection on that? A. I should think it was along in 1906, in the Fall of 1906, or early in 1907, would be my judgment about it.

Q. What did you do for working capital, Mr. Waddell? Where did you get that? A. Well, we formed a syndicate of the stockholders at Cincinnati; I joined the syndicate and I did not have the collateral to put up to the bank for borrowing

money from the bank direct. I put up my stock with the syndicate members and they furnished the collateral, the bonds, whatever it required, to get our credit. We borrowed I think, $52,000 from the bank in cash.

Q. When was that borrowed? A. That was borrowed at the time we increased our capital stock from seventy-five to one hundred thousand. We had to provide working capital, and we arranged for $75,000 working capital.

Q. Was $52,000 the outside limit of your borrow- 2816
ings? A. We may have exceeded that some times, temporarily.

Q. You have testified, I believe, that $117,000 was the cost of your plant? A. That is the original cost.

Q. Well, that $17,000 was borrowed in the manner you suggested, was it not? A. No.

Q. Where did you get that $17,000 above your capital stock? A. My recollection is that we made a profit the first year of something like $12,000 in the business, and we never paid it out. We
used it, it went into our plant and we had a cur- 2817
rent indebtedness additional to the direct loans, permanent loans from banks. Sometimes our indebtedness would run $25,000 or $30,000. We were using that capital.

Q. Didn't you testify in New York, or somewhere, that you got that $17,000 in the exact manner that you have mentioned, by putting up your stock with your associates and depositing it in some bank, and thereby raising the $17,000 extra cost of your plant? A. I don't know what $52,000 was paid in for. We borrowed it as we needed it, $5,000 at a time.

Q. I didn't ask you that. I asked you if you did not testify in New York some few weeks ago

that you procured that $17,000 by forming a pool of your stockholders, you putting up your stock and they providing that $17,000 from some bank, I believe it was in Cincinnati, didn't you so testify? A. I may have done so; I don't recollect. It was a part of what we had in the business. I don't know a particular dollar that it was applied to.

Q. If you did so testify it was, when you were uncertain as to whether you got it in that way or
2819 some other, is that what you mean? A. No. I mean that we borrowed $52,000 for working capital, and we had earned some money in the business, we had some, and probably when we had our entire plant completed we may have been in debt for $17,000 or $20,000, I don't know what, on the completion of the plant. It went into the general run of the business. I would not be able to identify what particular loan or from what particular source the $17,000 came out.

Q. Well, you are just as able to identify it now
2820 as you were six or eight weeks ago, aren't you, Mr. Waddell? A. Yes; I think so.

Q. Well, I will call that to your attention later. You have testified that the capacity of your mill was 250,000 kegs a year. Is that correct, on a conservative basis? A. That is correct on a conservative basis.

Q. That would be about eight hundred kegs a day? A. Depends on the number of days you would run.

Q. Well, you would run from 280 to 300 days, wouldn't you, if you were running full? A. I can give you the capacity more definitely, and then you can figure the days. We run 22 kegs under the wheels at a charge; we had four wheels, that would make 38 kegs to a run; 12 charges a day, in 24

hours, two hours to the charge. That would be twelve times eighty-eight, that would be 1056 kegs that would go in under the wheels. Now, in that would be, 72 per cent of that would be white, would be nitrate of soda, which contains varying degrees of moisture, from two per cent down to one-half of one per cent. And that moisture would dry out in the glaze going around and perfecting the powder. There would be a loss of perhaps on that 1056, a loss of twenty-five kegs by weight in the powder. And then there would be some dust from 2822
the separator, that would go back and be worked over under the wheels, ground in with the green charges. We would get out about one thousand kegs, packed out of 1056 kegs, about 1,000 kegs; and if we would run 250 days we would run 250,000 kegs in a year. If we were to run 300 days, there would be ultimately 300,000.

Q. Well, you say approximately 1,000 kegs a day. That is 25,000 pounds, 25 pound kegs, aren't they? A. The most I ever made was 26,200 kegs in twenty-five running days, consecutive running days.

Q. Well, they are 25 pound kegs, are they not? 2823
A. Yes.

Q. Do you remember the East Cuba Coal Company? A. Yes.

Q. Did you sell them some of your powder? A. Yes.

Q. Were you selling them in June, 1906, do you recollect? A. I don't remember the date.

Q. Is this the letter that you signed to that company, dated June 4, 19106? A. (Examines paper) That is my signature.

(The document was marked Defendant's Exhibit T and read to the jury as follows):

East Cuba Coal Mining Co.,
Cuba, Ill.

Gentlemen:—

To provide a liberal working capital to care for the increased business of its enlarged plant, Buckeye Powder Co., has doubled its Capital Stock to Two Hundred Thousand Dollars. The Mills now have a
2825 daily capacity of 40,000 lbs. and the superior quality of the Buckeye powder is recognized in all markets.

Every buyer appreciates the advantages that result from maintaining competition.

Let us quote and serve you? Our powder is guaranteed in all respects.

Truly yours

Buckeye Powder Company,

2826 R. S. Waddell,
President.

Q. Mr. Waddell, the statement in that letter that you had increased your capital stock to $200,000 was not true, was it? A. Yes, we had increased it.

Q. E d you changed your charter? A. We had amended our charter.

Q. Oh, you had amended the charter? A. Yes, sir.

Q. Is your statement that you had a plant with a capacity of 40,000 pounds true? A. 40,000 pounds that would be——

Q. 1,600 kegs a day? A. Well, that is pretty extreme. I have made 1,400 kegs a day, but I do not believe I ever made sixteen.

Q. In selling powder, Mr. Waddell, one of the chief desires on the part of the consumer is to have prompt deliveries and quick service, is it not? A. Of course, if a man orders, he may order it shipped in thirty days, or shipped in sixty days, or he may order it shipped immediately.

Q. Well, it is a commodity he must have immediately, or else his whole force will be tied up, wouldn't it? A. It depends upon his requirements.

Q. Now from your experience of now something 2828
over twenty years as a salesman, do you think that it helps a concern who is selling goods to deceive customers as to those matters in relation to its plant that make for a quick service and immediate deliveries and so forth? Would you say that as a salesman? A. I don't think any business concern is bound by the advertising it gives out. There is a lot of buncombe in it.

Q. Therefore, any printed matter that you ever circulated in reference to the Buckeye Powder Company, we are at liberty to consider untrue if we so desire, are we? A. Let me have that ques- 2829
tion.

(The question was read by the reporter.)

A. No, sir.

Q. You do not guarantee its truth, do you, from your present statement, even though you signed it? A. Very generally, yes. There may have been some exaggerated statements.

Q. You call this statement, which amount to 1,600 kegs a day an exaggeration which comes within this category, that is proper and all right as a matter of salesmanship and advertising, is that your idea? A. I could have made sixteen hundred kegs a day. I could have done that. I had the glaze capacity. I would not do it all the while.

Q. Well, I understood you to testify this morn-

ing that Mr. Coyne's statement about your capa ity was incorrect; he had it too much; 300,000 kegs; it was really only 250,000 kegs? A. No.

Q. Didn't you so testify this morning? A. I don't want to be understood in that way. I said that 250,000 was a conservative regular production that I could supply all the while. We had a possible capacity of 300,000 kegs. Mr. Coyne was right in that respect.

2831 Q. You say in this letter you have a possible capacity of 480,000 kegs? A. Yes; that is for a day.

Q. You have testified, Mr. Waddell, about having some salesmen employed by the Buckeye Powder Company. How many salesmen did you employ? A. I never had but one salesman direct from Peoria who might be considered a salesman; that was Peter P. Laughlin. I had a salesman in Chicago that I gave a net price to, and he made what he could above that. I had another—that was Mr. Miller, of Chicago. I had Mr. E. C. Bur-

2832 roughs at St. Louis, in that territory near St. Louis, and he was a net price agent. And I had some little fellows who were demonstrators that tried to sell, usually one of them at a time.

Q. Did those agents send you written reports of the sales they made? A. If they made a sale they would send in an order.

Q. Did they send you letters commenting on the trade conditions in the territory in which they were traveling, or trying to sell powder? A. They wrote me the work they were doing on the road.

Q. Did they ever tell you anything about competitors' business, who was selling the powder to certain customers that you were trying to sell to? A. Yes, I think so.

Q. They told you what prices were being charged,

so far as they could gather them, didn't they? A. If they would hear of a price they would mention it, not always.

Q. They would tell you what company was selling that powder at the time, wouldn't they? A. They might have mentioned what powder was being used.

Q. If they got any information as to what price it would take to interest a man as a customer that fact would be mentioned to you also, wouldn't it? A. No, sir; I don't think they would take that up. 2834
They had the price that I gave them.

Q. They would not tell you anything about how low a price you had to make in order to get that particular business? A. No, sir; I don't think so.

Q. Are you sure they never wrote you anything of that sort? A. They might have done so. I don't know. I don't recall any instance of that kind.

Q. You have mentioned this Trade Bureau in your complaint, and testified about it, Mr. Waddell, which you say was maintained by the du Pont 2835
Company. I believe you referred to an investigation that you made of it at one time at the request of Mr. Eugene du Pont? A. Mr. Eugene du Pont, and Dr. Alexis I. du Pont.

Q. They are both dead? A. Yes; I think so.

Q. And the investigation you made was by going to see Mr. Kerr, who was a witness who has been on the stand here? A. Yes; I went to their Repauno office.

Q. Where was this trade bureau located at that time you referred to? A. Oh, about four miles from the duPont office.

Q. At Wilmington? A. The trade bureau was in Wilmington and the duPont office was out on a farm.

Q. Well, you testified you did investigate it, didn't you? A. Yes.

Q. And you testified here the other day about it. Do you know whether, Mr. Waddell, there was a system—that don't matter. "Do you know anything about the system known as the trade report system, Mr. Waddell? A. Yes, sir. Q. In use by the defendants? A. Yes. Q. State what you know—describe your knowledge of the system, how it originated and what the purpose of it was?" And
2837 you answered: "A. The system was originated in the dynamite branch of the Powder Trust, and I was sent by Eugene duPont and Dr. Alexis I. duPont, who was vice president of the dynamite interstate, to investigate the trade reports system introduced by Mr. Haskell in the dynamite interests for the purpose of ascertaining whether it was suitable to use and whether I would recommend it for the black powder interests. I was sent to Mr. Kerr." Do you know how long that one had been used at that time? A. No.

2838 Q. You don't know how long that was in use? A. No.

Q. (Reading) "Q. When was this that you were sent on this mission? A. I should think about 1899 or 1900; I have forgotten the exact date. Q. Now, did you investigate their system at that time? A. Mr. Kerr had been instructed by Mr. Alexis I. duPont, vice president of his company, to give me the fullest information in regard to it. He showed me the system of reporting, and the reports they gathered in, the nature of the reports. How they obtained information from their agents and travellers—salesmen—and then disseminated the information to the branch offices or their salesmen who might be interested in other information that had come to them through other sources. Q. State

how they disseminated this information. A. It was sent out by the trade bureau. Information that would come in from one salesman that would interest another department or another office would be sent to that office, giving the nature of the information. I reported to Mr. duPont, after I had examined the system thoroughly, that I would not recommend a spying system of that description for use in the black powder business, and we did not adopt it." That was your report to Mr. duPont? A. Yes.

2840

Q. Then, after some discussion on various matters, you are again asked, on page 2077, by Mr. Abbott: "Q. During the time that you were in the employ of these interests, before you went out to establish the Buckeye Company, had the trade report system become an established system in connection with any of these interests? A. Never was used in the black powder interests until after I left, until after Mr. Haskell came over from the Laflin and Rand." Then I asked you: "Q. Can you fix the date? A. Well, it was about February, February 1, 1903, I left." Now, by that testimony you intended us to understand, Mr. Waddell, did you not, that this was such a bad system that it shocked your moral sensibilities; is that what you meant? A. No; not altogether that. I was familiar with the trade bureau system before I ever went to Wilmington and before I made this investigation.

2841

Q. I am talking about your testimony here as to the reports you made to Mr. Eugene duPont? A. I thought it was unreliable.

Q. Oh, then, you didn't think there was anything bad about it, except it might not be certain, might not give accurate information; is that what you mean? A. Yes; too many opportunities for false

statements by irresponsible men who gathered this information.

Q. But you said that you reported to him that you did not approve of such a "spying system as that"? A. Yes.

Q. That was what you objected to, wasn't it? A. Yes; I objected to that prying into men's business.

Q. That struck you at the time you made your investigation as a very undesirable and illegitimate
2843 method, did it not? A. I saw a good many objections to it and I expressed myself further to these gentlemen on it.

Q. What did you say further? A. I told Dr. Alexis I. duPont of the calls that his men had made—the dynamite men had made at my office in Cincinnati. They would come into the office and say that "We are required to visit the magazines of the dynamite companies and make a specific report. Now, Mr. Waddell, I want to go to the ball game this afternoon and I want you to tell me all about the magazines. It is six miles from
2844 here out to your magazines?" "Yes; I have a dynamite magazine under my care." "Where is that located?" "Well, it is on a hillside just below the Hazard." He would stay in the office and what he could get from me and from Mr. Brokaw, our magazine keeper, he would give a voluminous report, giving distances to all the surrounding residences, and then would go to the ball game; and those kind of reports went into the Wilmington office; and I told Alexis I thought they were unreliable and that he had better depend on a service that was superior to that. We discussed it very fully. Q. There is a difference between reliability and the superiority of a service and its propriety. I had understood that you were endeavoring to show that

it was an improper arrangement, Mr. Waddell, and in that regard I would ask you if you did not say in New York, in this testimony, page 132: "And I studied the system pretty closely with a view to recommending it if it was desirable, but it was so obnoxious to me that I refused to be a party to putting it in; I thought it was beneath the dignity of the duPont Company to ever be a party to a business like that." That is the report you made, isn't it? A. That is my judgment of it; yes.

Q. Now, Mr. Waddell, do you recall this testi- 2846
mony that you gave in the Government suit on this subject, Volume 1, page 248, being questioned by Mr. Scarlett: "Q. What do you know of the bureau of information? What was it? A. I know of this bureau of information, that it was invented and perfected by Mr. Haskell as president of the dynamite companies for fighting the dynamite competition. I investigated it and its methods of work. By Mr. Graham: Q. When was that? A. That was in 1902. We used and adopted it in the black powder business." Did you so testify? A. Yes; that was adopted in the black powder business; 2847
that is, I think it was.

Q. Did you so testify? A. I don't know what I testified.

Q. Will you look at the book if you have any doubt about it? A. (Examining book.) Where? I don't find it here.

Q. Right here (indicating). A. When was that; that was 1902?

Q. 1902. In that you say "we"; do you remember saying that you used that in the black powder business? A. I used the word "we"; I say "we," meaning the duPont Company.

Q. Did you use the word "we" or didn't you? A. The word "we" was in there; I suppose I used it. I always speak of myself as being one of them.

Q. You were under oath upon this occasion in October, 1908, weren't you, Mr. Waddell? A. How is that?

Q. You were under oath in 1908 on this occasion when you gave that testimony? A. Yes, sir; I certainly was.

Q. On which of these occasions now in your opinion are you telling the truth, if on either? A. Both.

2849 Q. To whom did you sell the Buckeye Powder Company plant? A. To F. W. Olin.

Q. Did you go to work for him for a year? A. One year for the Western Powder Company.

Q. Now, in this suit, you have testified at some length about the internal affairs of the Western Powder Company, during the year that you worked for that concern, have you not, Mr. Waddell, telling who they sold their powder to, and how they packed it in various kegs of other companies and so forth? A. I have answered the questions put to me, yes.

2850 Q. The information you have testified to here on that subject, you gained while you were in the employ of the Western Powder Company, did you not? A. Yes.

Q. Do you recollect that you were asked in the Government suit, in October, 1908, to testify to those things? A. Not in 1908.

Q. In October, 1908, about a month after you sold out? A. I think that question was asked me —some question in relation to who the Western Powder Company was selling its powder. At that time I was in the employ of the Western, and I think that I refused to give the information.

Q. On the ground that it was improper for you to disclose the business of that Western Powder Company, was it not? A. I think I put it on the ground

that the Western Powder Manufacturing Company was not a party to the dissolution proceedings.

Q. Are they a party to this suit? A. Indirectly, I think they are. Yes, I judge they are.

Q. Is this the way you testified, Mr. Scarlet questioning you: "You may state, if you know from whom the American Powder Mills is now purchasing its blasting powder, and what price it pays for it? A. I do not know all its sources of supply nor what price it pays. Q. You may state of you know this, whether the successor of the Buckeye Powder 2852
Company sells the American Powder Mills any powder, and if so, what price is charged for the same. Mr. Graham: How can he tell that, except by hearl say? The Western Powder Company, you mean. Q. The Western Powder Company, successor to the Buckeye Powder Company? A. I must decline to answer that question. Q. Why? A. I am serving those people and they are not parties to this suit, and I do not think I ought to be required to give away their private business." Did you testify? A. I think I did.

Q. Whereupon Mr. Mahaffey made this state- 2853
ment, do you recall? "That question is sufficiently connected with the suit in this case to require an answer. I have no power to compel you to answer that question, but if you can answer that question you ought to answer it if counsel desires it"; whereupon the question was re-read, and you said you declined to answer that question, did you not? A. I think I did.

Q. Whereupon Mr. Scarlet said: "I hope you will see your way clear to answer that question. I would not have asked it if I had not thought it material." You declined to answer it, for the reason you gave. "Yes, that is giving away a private matter of people that are not interested here as

clients, or parties to this case, and I do not think I should be called upon to answer that." There was a time, Mr. Waddell, when you had some loyalty to your employers, was there? A. Yes, I had the assurance of Mr. Olin that the du Ponts did not have a thing to do with the Western Powder Manufacturing Co. That it was wholly independent. I was working for the Western Company. It was not a party to the Government suit, and I felt that I ought not to be required to give
2855 that testimony.

Q. When did you discover your mistake and come to the conclusion they did have something to do with it? A. A very few weeks after that. I furnished a lot of powder to the du Ponts from those mills.

Q. You continued to collect for your services from that company, did you not? A. Oh, yes.

Q. Does not your feeling of that sort usually end when you get off the pay roll, Mr. Waddell? A. I am not a slave. I am not hired for life. My ser-
2856 vices end when I quit.

Q. In regard to this powder which you say was packed in the various kegs of various companies, I believe you testified that there was a thousand kegs of powder that had been manufactured by the Buckeye concern, did you not? A. Part of it was kegs and part on the way around the line; yes.

Q. You said that part of that powder was transferred from Buckeye kegs into du Pont kegs, as I recall your testimony? A. Yes.

Q. And it was sold by the du Pont Company, as you understand? A. Yes, that particular shipment.

Q. How many kegs of that? A. 400 kegs.

Q. How many? A. 400.

Q. You have a distinct recollection of that fact? A. That is my recollection of it.

Q. Now, you realize the importance of that testimony in this suit, I dare say, Mr. Waddell, as showing the quality of Buckeye powder and that it was good enough for the du Pont Company to ship out? A. Yes, sir.

Q. You realized it was an important subject? A. I do.

Q. What did you say about it in the Government case? A. In the Government case I do not think I was asked that. I do not recollect it.

2858

Q. After you stopped drawing a salary from Mr. Olin, you soon unbosomed yourself about the business of the Western Powder Company. Don't you recollect that in 1910? A. I did learn a great deal more than I knew.

Q. You did testify then, when you were recalled for the rebuttal two years later, and after you had ceased to draw money from them on the subject of what they had done during the years you had received pay, did you not? A. Yes, I learned they were a unit.

Q. You did so testify? A. Yes.

2859

Q. Do you recall on July 14, 1910, testifying as follows, pages 1088 and 1089 of the rebuttal record: "Who were the purchasers of the Buckeye Powder Company? A. F. W. Olin, President of the Equitable Powder Company and Almon Lent, President of the Austin Powder Company. Q. Who marketed the powder, if you know, which was on hand after you had sold out to the Equitable and the Austin? A. I was manager for the company for a year and looked after that end of the business. The sales business, I suppose that the Austin marketed a certain amount, the Equitable marketed a certain amount and the American marketed a certain amount, did they? A. They all marketed their several brands individually. I marketed the

Buckeye and the Western. Q. Do you know whether the du Pont marketed any of the powder? A. They sold about 20,000 kegs. Q. How do you know it? A. I saw it packed in their kegs. We packed it in all the kegs, all the powder companies, American, du Pont, Western, Buckeye, Equitable and Egyptian. Q. Was the powder which was on hand and which was Buckeye powder at the time the Buckeye Powder Company was sold, marketed
2861 or put up in the different kegs of these companies for these purchasers, under their brands and sold as theirs? A. No, sir, that is a mistake. Q. What was the fact? A. The powder that was on hand at the time was in Buckeye kegs. At the time of the sale, about 5,000 kegs on hand that went into the sale of Buckeye or that were sold in Buckeye kegs. Powder that was made by the Western Manufacturing Company was sold in kegs of these other companies." Did you so testify at that time? A. Yes, but I went to the magazines personally and transferred 400 kegs from Buckeye
2862 kegs into du Pont kegs, and it went to the Norris Coal Mining Company of Norris City, Ills., on a du Pont order, and my reason for following it personally was that I had had Buckeye powder returned by the Norris Coal Company, 10 kegs, I think, that they could not us. I wanted to know whether it was the fault of the powder or whether it was prejudice. I transferred that, or stood by and saw it transferred. Now, I do not know whether that was the powder that was packed in Buckeye kegs at the time of the sale to Olin, or whether it was the powder that came around the line, later, and was put into Buckeye kegs, but a part of it, that 400 kegs was transferred. I was not asked in regard to that.

Q. Then your testimony in this Government rec-

ord was not correct, was it, Mr. Waddell, to the effect that there was a mistake, and that it was only the Western powder that was shipped in those kegs? That was what you said here. Had you forgotten this incident and your particular purpose in going through that operation in 1910? A. My attention was not called to it.

Q. You had forgotten it in 1910? A. I do not know that I had forgotten it.

Q. Would you have testified in this way, with that incident in your mind, in 1910? A. It did 2864
not occur to me. No one asked me the question.

Q. You were asked the question specifically that I have just read to you: "So that the Buckeye powder which was on hand and which was Buckeye powder at the time the Buckeye Company was sold, was marketed, or put up in the different kegs of these companies, for those purchasers and under their brands was sold as theirs. A. No, sir. That is a mistake. Q. What was the fact? A. The powder that was on hand at the time was in Buckeye kegs. At the time of the sale there were about, 2865
say, 5,000 kegs on hand that went into the sale of the Buckeye, or that were sold in Buckeye kegs. The powder that was made by the Western Powder Manufacturing Company was sold in the kegs of these other companies." A. There is one mistake there that I want to call you attention to. We did not have any 5,000 kegs on hand.

Q. I know that. Did you not so testify at that time? A. No, sir, I think that is a mistake in the print. I knew I had the invoice of what we sold. We only had $5,500 worth of stuff, all told, in the plant.

Q. We are not discussing that part of the statement. A. You are calling my attention and asking me to approve it. I cannot do it.

Q. I am not calling your attention to that part of the statement. You stated a minute ago you were not asked on this subject as to selling Buckeye powder in du Pont kegs. A. I was not asked as to the transfer of those 400 kegs. I had reference to the general proposition that the Buckeye powder and the Western powder was sold in their own kegs, and that the powder that was made by the Western Powder Manufacturing Company was sold in the kegs of the other company, and it was
2867 some little time before we received those kegs—the blanks, the empty kegs.

Q. And that testimony that was given within a year and a half after the time of this incident, where you went to the storehouse and personally superintended the transfer of this powder from Buckeye kegs into du Pont kegs, is that true? A. I recall the circumstances.

Q. Was it within a year and a half of the time you gave this testimony? A. Yes. I would like to say in further explanation of that, that Mr. Olin
2868 had, before I gave this testimony—had furnished a letter to the Government, giving a full statement of all the powder that was shipped from the Western Powder Company's mills, packed in the kegs of these other companies, and that released me entirely.

Q. Released you from what? A. From any obligation not to give this information.

Q. Did it release you from telling the truth as to the transfer of powder from Buckeye kegs to du Pont kegs? A. That question was never asked me.

Q. You say that in the face of this record, that the question was never asked you as to whether Buckeye powder was transferred into du Pont kegs from Buckeye kegs? A. No; the subject never came up.

Q. That is all the explanation that you have, is it? Have you any other explanation? A. No other.

Q. Just one more question. You yourself, when you were operating the Buckeye Powder Company, when you sold powder to other parties, took their kegs and stamped their names on them, didn't you, Cerberite and Egyptian? A. The Egyptian furnished their own kegs. Mr. Olin furnished the Egyptian kegs.

2870

Q. You stamped the company to whom you were selling the powder—the name on the keg? A. I did not do it.

Q. It was done in your shop, and you knew it? A. It was not done in our shop. We bought our kegs outside.

Q. Did you not so testify the other day here on the stand? A. No, I think not.

Q. Did you not say we furnished their kegs, but we had a die made for them, and stamped them Cerberite—sold them in that way? Did you not so say the other day? A. Yes.

2871

Q. Page 3643? A. We bought their kegs from Stuber & Koch Company in Peoria, and had a die made for them. Instead of stamping them with Buckeye, we put them with Cerberite on. The Egyptian furnished their own kegs.

Q. Put out at your factory, so that when they left your shop, they had the mark of the Cerberite Company or Egyptian Company on them? A. Those shipped out from Peoria, and we filled them at the plant.

The defendant's exhibits for identification marked S-1 to S-12, inclusive, the same being letters written by D. Simpson, Purchasing Agent of the Western Coal and Mining Company of St.

Louis, Mo., to R. S. Waddell, President of the Buckeye Powder Company, Peoria, Illinois, were offered in evidence by Mr. Button, without objection.

Defendant's Exhibit S-10 was read to the jury as follows:

St. Louis, Mo., June 6, 1904.

Buckeye Powder Co.,
Peoria, Ill.

2873 Gentlemen:

Referring to your recent visit here when the matter of the Powder contract of this company was discussed. I understood you expected to submit a proposition covering our supply within a few days.

I have heard nothing further from you in regard to the matter and before taking definite action I would be glad to have you advise me whether or not you feel disposed to make us a proposition.

Kindly give this matter your early attention.

2874

Yours truly,

D. Simpson,
Purchasing Agent.

Defendant's Exhibit S-1 was read to the jury as follows:

St. Louis, May 7, 1905.

Mr. E. C. Burroughs,
G. S. A. Buckeye Powder Co.,
717 N. Fourth St., City.

Dear Sir:

I desire to inform you it will not be possible for me to accept, on the part of this Company, the

proposition submitted by you on our powder business for the ensuing year.

Will you kindly convey to your President, Mr. Waddell, and accept for yourself, my thanks for the interest which you have taken in this business. I hope your efforts in securing this business may be more successful at some later time.

Yours truly,

(Signed) D. Simpson,
Purchasing Agent. 2876

(Contracted at 95c. Burrows.)

Q. Can you tell us, Mr. Waddell, what was the proposition that you submitted in May, 1905, that Mr. Simpson refers to in this letter? A. I did not submit any. Mr. Burroughs may have submitted one.

Q. Then you don't know? A. I don't know.

Q. I desire at this time to call your attention to the contract which has already been introduced in evidence as Plaintiff's Exhibit 1027, being a contract between the Explosives Supplies Company and the Western Coal and Mining Company under date of June 20, 1904: It states: "This contract is for a period of two years from July 7, 1904, to July 7, 1905, at the following prices: $1.10 per keg, f. o. b. cars at their mines in Missouri; $1.12½ per keg f. o. b. cars at their mines in Kansas; or $1.10 per keg if delivered from local mills; $1.15 per keg f. o. b. cars at their mines in Arkansas and $1.25 f. o. b. cars at their mines in Indian Territory." And this further states that it is for 50 per cent. of the black blasting powder in kegs of 25 pounds each required for use in the mines owned, leased or controlled of the second party. There- 2877

fore, when this letter I last read was written by Mr. Simpson to Mr. Burrows in May, 1905, the duPont Company already had a contract with this concern for 50 per cent. of its requirements. Did you know that fact, Mr. Waddell? A. I was talking about the Consolidated Coal Mining Company of St. Louis, and you are talking about the Western Coal Mining Company. They are seperate institutions, I believe.

2879 Q. Very good, but the Western Coal Mining Company, however, was under contract to take 50 percent of its supply from the du Pont Company at that time. Did you know of that fact? A. I do not think I did. I do not think I knew anything about the Western.

Q. Then that was one of the contracts the du Pont Company had that you did not keep track of, Mr. Waddell? A. I don't think I knew of that contract.

Defendant's Exhibit S-5 was read to the jury as follows:

2880

St. Louis, Mo., Oct. 9, 1907.

Mr. R. S. Waddell, Pres.,
Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:

I have your letter of the 8th, with reference to our order No. 6541 for two carloads of powder.

I find that including this order you will now have requisitions from me for four carloads of powder. The situation in our Kansas Field has been desperate. The miners where your powder is wanted refused to use any other and in the absence of your powder our mines were closed down for

three days during the past week. The miners realizing the fact that we were in no wise to blame for this shortage have resumed work using du Pont Powder. I give you this information so that you will see the necessity of immediately making shipment of some more powder on our orders. . . .

I would like you to consider the order for the two cars which you have just received as being our monthly order for powder, and would ask that you ship the other two cars just as quickly as you possibly can. The last car, which you shipped to us, 2882
has, of course, not yet reached there. I wish on receipt of this letter, you would advise me on what dates you expect to be able to make shipments.

Yours truly,

D. Simpson,
Purchasing Agent.

Q. Now, at this date, October 9, 1907, was during the time you were furnishing the 12,000 kegs at a price of $1.08½ that you testified to on Friday, was 2883
it not? A. Yes.

Q. And refreshing your recollection by this letter, it was true, was it not, that your powder was very slow in coming that the mills of Mr. Simpson had been closed down for three days on that account; is that true? A. That is the statement in that letter.

Q. Have you any doubt of it from your knowledge of Mr. Simpson and the conditions down there? A. What is that?

Q. I say, have you any doubt of it from what you knew of the trade? A. No; I have no doubt of it.

Q. The next letter is S-9, dated October 15, 1907, addressed—to begin with, this is a carbon copy,

but the original of it is signed by you as president, is that right, Mr. Waddell? A. I presume it was; it was with the first ones.

Defendant's Exhibit S. 9 was read to the jury as follows:

October 15th, 1907.

Mr. D. Simpson, Purchasing Agent,
Western Coal & Mining Co.,
2885 Dolph Building,
St. Louis, Mo.

Dear Sir:—

I have just returned from Chicago, where we had a conference regarding the Kansas business. I also have letters from the miners, one of them requesting copies of letters that we have writtn your Company. I had only one under date of the 10th of September, which was a circular letter calling attention to the car shortage that was beginning to mani-
2886 fest itself and suggesting that orders be placed in advance.

There seemed to be a disposition to criticise your company or a suspicion that there might not be good faith and I thought it best to remove all cause of this kind. I enclose you copy of our letter to the Secretary of the Local Union. I have also written Mr. Howat suggesting the better plan would be to let us serve your two mines and drop the balance of the Kansas business for the present. To this I think Mr. Howat will agree and he seems to suggest this course. We only have two other orders for Kansas and those can be laid aside. Our slate is about clear of FF and we could very readily take care of all the demand for our brand at your two

mines. I hope to have another carload ready to forward to you by Thursday of this week This seems to me the better course to pursue and I hope it meets with your approval.

Truly yours,

Buckeye Powder Co.,
President.

Q. Now, then, therefore, on October 15, 1907, you 2888
were suggesting to Mr. Simpson that you drop part of his business, Mr. Waddell, because you could not fill his orders, were you not? A. Yes; that is the letter.

Q. Therefore, in putting the Western Coal & Mining Company among the list of consumers whom you approached with a desire to make contracts and failed, that was hardly the list that he should have been put in, was it, Mr. Waddell; you already had his business and voluntarily gave it up as I understand it now? It should not have been on that list, should it? A. I did not voluntarily 2889
give it up. I could not fill orders that came to me; that I was crowded with orders for FF, Montana, and many other points. The trade came unsolicited by me, came over the long distance phone, and there was an order for a big bunch of carloads immediately for one special sized grain. It took me by surprise and I could not supply that one, in addition to the other orders.

Q. Do you know where the letter is that you wrote to some officer of the local union that you referred to in this Exhibit S-9? A. I suppose that officer has it.

Q. Did you keep a copy of it? A. I may have done so; my attention was called to it, and I do

not know the officer's name. I may have some letters to Howat. I will search for them and see if I have.

Q. I was going to ask you who Mr. Howat is? A. Mr. Howat I understand, is the sub-district president of the Miners' Union of Southwest Missouri.

Q. So that you were personally corresponding on this subject with various officers of the union? A. I answered their letters when they wrote to me.

2891

Defendant's Exhibit S. 6 was read to the jury as follows:

St. Louis, Mo., Oct. 16, 1907.

Mr. R. S. Waddell, President,
Buckeye Powder Co.,
Peoria, Ill.

Dear Sir:

2892 I beg to acknowledge receipt of your letter of October 15th, with reference to the situation regarding the powder at our Kansas mines.

I note your suggestion with reference to the feeling regarding good faith on the part of our Company, and I am perfectly free to confess, that this feeling has been evidenced all along since we agreed to furnish Buckeye Powder. You know, as well as I, that there is absolutely no ground for such a feeling on the part of the men, so far as either of us are concerned. We immediately placed orders with you for your powder, and as you know have done everything in our power to secure prompt filling of them, knowing that this feeling existed, based, I am at a loss to know, just upon what grounds, and further that a statement had been

made that information had been received in that locality that your Company had increased its capacity 1,500 kegs per day. I did everything that I could to remove this feeling, going so far as to furnish our superintendent with copies of our correspondence. This was insufficient for the officials of the miners as is evidenced by the fact that they had the matter up directly with you and solicited copies of the correspondence between our Companies, evidently doubting the accuracy of those which I had furnished. I am very sorry to note 2894
that you were unable at the writing of your letter of the 15th to Mr. Wells to find your letter to me of Sept. 25th, as this letter was one of those, copy of which I forwarded to our superintendent, and I now inclose herewith copy of that letter to you, and I would esteem it a favor if you would, upon receipt of this, write Mr. Wells as indicated in your letter you would do upon finding the letter.

I note your desire as evidenced in the last paragraph of your letter to remove any feeling that our Company has acted in any other but good faith.

2895

I realized when we offered this business to your Company that you had other contracts of a prior date, which naturally and very properly you would have to take care of, and which would take precedence over ours. This is only a business proposition and had the cases been reversed, I should certainly have expected you to give our Company's orders preference over others taken subsequently, so that so far as your position is concerned in my opinion it is absolutely correct.

The miners are not sufficiently versed in the manner of the production of powder and the necessity for taking from an available output a certain percentage of other sizes, as perhaps they look upon the production of a size of powder in about the

same way as they look upon the production of coal, and assume that because a mill may have a capacity of 1,500 kegs per day that that entire amount is available for their orders.

However, I believe, with the light which you have thrown upon this matter, they will realize the difficulty under which we are both working, and I hope that between us we may be able to have this business conducted smoothly from now on. The results so far have certainly proven very disastrous
2897 to our Company for the reason that these mines have been idle a considerable portion of the time from lack of powder supplies.

Yours truly,

D. Simpson,
Purchasing Agent.

Q. Now, somebody told them down there, both men and Mr. Simpson, that you had a capacity of 1,500 kegs a day, Mr. Waddell? A. I do not know
2898 anything about that.

Q. You don't know anything about that; you hadn't written them any letter similar to the one you wrote the East Cuba, had you? A. I had not solicited the trade in Southwest Missouri.

Q. Had you sent copies of these circulars down there, this advertisement which you got up? A. No.

Q. This is one of your advertisements, isn't it (showing witness)? A. Yes.

Q. In which you state you had a capacity of 35,000 pounds a day, or 1400 kegs; do you remember stating that? A. Yes; we made 1400 kegs a day.

Q. Right along? A. Yes, sir; several days in succession.

Q. That is what you meant when you said the Buckeye mills had a capacity of over 35,000 pounds of high quality powder per day? A. *Yes.*

Q. You were talking about a couple of days? A. No, several days; I was talking about capacity and not output.

Q. Both the miners and Mr. Simpson subsequently found out that you had only 800 or 1,000 kegs a day, and upon that statement as a salesman, would you say that would tend to foster your business and increase it? A. You would have to understand 2900
the conditions under which we were laboring at that particular time. A sudden call for one specific grain out of six—a keg of powder is broken up into six sizes, and there may be an unusual demand for one size and no demand for the other. My magazine may have been half full of powder or full of powder.

Q. Now, I am not talking about the difficulties you had, Mr. Waddell. I am talking about this representation you made to the trade. I am asking you, as a salesman, if it would not tend to de- 2901
moralize your business to make statements of that sort to your customers, they relying on them, to get supplies of powder, and subsequently to find them to be untrue? As a salesman, wouldn't you say that? A. The Western Coal Mining Company was not a customer of mine.

Q. Won't you answer the question, Mr. Waddell? A. No——

Q. It wasn't——

Mr. Abbott: He wanted to make a statement. I think he is entitled to make it.

The Court: He was not responding. He was not responsive.

The Witness: Of course, I would like to explain that answer.

The Court: You will have an opportunity.

Mr. Button: He will have an opportunity on re-direct to make an explanation.

Q. The next one, Exhibit S-7, September 25, 1907, which is the letter that Mr. Simpson enclosed to you, or a copy of it, which you have been unable to find, addressed to the local union, was as follows:

2903 Peoria, Ill. Sep. 25, 1907.

Mr. D. Simpson, Purchasing Agent,

Western Coal & Mining Co.,

Dolph Building,

St. Louis, Mo.

Dear Sir:

2904 We have your order #6516 for one carload of powder to be shipped to Yale, Kansas. We expect to forward another car to you the latter part of this week. We note your request that we book you for 2000 kegs per month for Mines No. 11 and 13.

We think after the 30th inst. the demands of our regular contract trade will have been satisfied and we will be in better position to take care of this trade. The difficulty in obtaining cars, combined with the excessive demand of our regular trade has been taxing us to our utmost capacity, and while we carry a large stock of powder at all times, this stock is graduated through the various sizes of grain, together with special or intermediate sizes which we manufacture for special trade. Contract trade which has been regu-

larly calling upon us for two carloads per month, have with the increased activity in business, been specifying four and five carloads a month and we have felt obligated to take care of this trade in preference to all other. However, we will do our best to take care of you to the extent of 2000 kegs per month as per request.

Thanking you for this order, we remain,

Very truly yours,

2906

Buckeye Powder Company,
R. S. Waddell Jr.
Treasurer.

Q. On September 25th, 1907, business was pretty good with the Buckeye Company, wasn't it, Mr. Waddell? A. With our contract trade at that particular time, it was.

Q. And this letter was written within a month of the time you wrote Mr. Coyne a statement to the effect that it had been the policy of your company for the year past to run it only 40% capacity 2907 for the purpose of filling unsolicited orders, was it not? A. Yes, we were running about forty per cent.

Q. And both that letter and this letter are absolutely true? A. Yes, both of them.

Q. The next Exhibit S-8, October 17th, 1907: "We have your favor of the 16th inst. and enclose herewith carbon copy of our letter this date to Mr. Oscar Wells, Yale, Kansas, which fully explains itself." But the letter to Mr. Wells seems to be missing. Do you know where that is? A. No, I do not.

Q. Have you any knowledge why these files are not complete, Mr. Waddell? A. Yes, there is about 90 per cent of them in Peoria.

2908 Q. Under your filing system, you have all the correspondence on this subject in one file, wouldn't you? A. We had them in books.

Q. Wouldn't you have them all in one file? A. Well, they would have been under one letter. That "W" would be under "Wells," in our system of filing.

Q. Are you sure you haven't seen any of that correspondence between yourself and this labor union lately? A. No; I have not.

2909 Q. The next is S-11, December 2nd, 1907, from Mr. Simpson to the Buckeye Powder Company, Peoria, Illinois: "I desire to acknowledge receipt of your letter of Nov. 30th, and note that you expect to forward us a carload of Buckeye Powder about Dec. 6th or 7th, and to follow this with another car in four or five days later. It is not my wish to cancel any orders, which you have, it being understood that you will continue to ship us a minimum of two carloads, or 2000 kegs per month until further advised. The only reason I

2910 had for asking for specific information regarding those orders was so that I would be in a position to advise our men in the Kansas District just what to expect. We want to use your powder, but we must get more prompt shipments, as otherwise depending upon getting Buckeye Powder our mines are liable to be idle on account of not receiving it. I would like, therefore, that you should make a special effort to make the shipments at the times mentioned." Were you selling nitrate on December 2nd, 1907? A. No; not at that time.

Q. The next one is S-12, dated January 6, 1908, from Mr. Simpson to yourself: "I am receipt of your letter of Jan. 4th, and note the reasons given therein for delay in shipment of our powder orders." I note that that letter from him to you is

missing. You don't know where that is, the one in which you give the reasons why you delayed the powder? Haven't you seen that lately? A. Is that a carbon letter?

Q. Yes. A. No, I have not.

Q. (Reading): "I hope that you will be able to make a very early shipment of at least the carload, which you had expected to start on the 25th ult. Our men in the Kansas district are getting very restless on account of not being able to get any Buckeye powder, and I fear that the delays occa- 2912
sioned and the necessity for using substitutes will result in their finally determining not to use any more of your product. Will you kindly do everything possible to make an early shipment?"

Q. The next one is S-2, June 15th, 1908, from Mr. Simpson to yourself: "Under date of June 10th, I wrote you as per copy of letter transmitted herewith. I had expected to have had some reply ere this, but not having heard, I think possibly my communication may have been missent. Will you please favor me with a reply at your earliest convenience?" 2913

Q. And the copy of his letter of June 10th to which you have not replied, is S-3, June 10th, 1908, as follows: "Our present commitments in the way of powder contracts, covering our supplies for Kansas, will expire within the next two or three weeks. It has occurred to me that possibly you would like to secure that business and my object in writing you now is to suggest that if my surmise is correct, I would be very glad to receive from you a proposition covering our requirements in that field for the next year. You furnished us during the year ending March 31st, 11,000 kegs and our annual requirements for that field will approximate 55,000

kegs in all. It is almost unnecessary for me to say to you that this business was taken away from the Du Pont Company two years ago and was awarded to the Excelsior Powder Mfg. Co. The Du Pont Co. have ever since that time made persistent efforts to secure the re-introduction in that field of their product, and if we could arrange matters so that you could make me a price, which would prove attractive, I know of no reason why your Company should not secure this business. All
2915 we are required to do under our contract with our men is to furnish them with a standard quality of powder of the size known as FF. Will you kindly give this matter your early consideration and if you deem it necessary, I would be very glad to see you personally to go over this matter more in detail."

Q. Now, from that letter, Mr. Waddell, you will observe that the Excelsior Powder Manufacturing Company had been supplying this concern ever since the expiration of the contract with the Ex-
2916 plosives Supplies Company, that I called your attention to a moment ago, did you not, is that correct? A. 1906 to 1908?

Q. Yes. You will recollect that the contract with the Explosives Supply Company was for two years, from July 7th, 1904. Therefore, it expired July 7, 1906. Therefore, it is true, is it not, that from July 7th, 1906, to June 10th, 1908, the Excelsior people were furnishing that powder upon a contract which was about to expire after that date? A. Yes sir, but it does not appear it was all. The Explosives Supply Company only had fifty per cent interest in the business.

Q. Very good. A. And it does not appear who had the other fifty per cent. Neither does it appear what proportion the Excelsior Company had.

Q. The Excelsior Powder Manufacturing Company was located where? A. Holmes Park, Missouri.

Q. You have not yet claimed the du Ponts had anything to do with that, have you? A. Well, I cannot prove it—I pretty nearly know it.

Q. That would not prevent you from claiming it, Mr. Waddell. Now, before that I will read this last letter which seems to be unimportant. (Defendant's S-4 was thereupon read to the jury as follows:) 2918

"Upon my return to the office on yesterday, I found your communication of the 3rd. I am leaving again today for an absence of some weeks and will not have an opportunity to do anything along the line suggested in your communication until my return, when, if matters are at that time in the same shape as at present with both of us, I will be glad to go into the matter more fully."

Q. You stated on Friday that you did not know whether the du Pont had a contract for this powder during those two years, and you did 2919 not want any such inference drawn from what you had said on your direct examination. You also testified that when you came to make your deal with Mr. Simpson to sell him powder at $1.08½ in 1907, he kicked a good deal because he stated he was getting his powder at 97½ cents. Do you recollect detailing the conversation you had with Mr. Simpson over the long distance telephone the other day? A. Yes, sir, that was in 1908—1907.

Q. 1907. While you were furnishing this $1.08½ cents powder? A. Just prior to that.

Q. As I recollect your statement it was that you furnished him 12,000 kegs? A. Approximately 12,000 kegs.

Q. Approximately, 12,000. Now, in answer to certain questions on your direct examination, in reference to this trade, page 3896, you testified as follows in answer to questions of Mr. Abbott in regard to this concern, having stated that your deals with Mr. Simpson, that is, general purchasing agent, and Mr. Keyes, who was the president of the Central Coal & Coke Company, of Kansas City, you said: "Q. Now, proceed and state within the ruling of the Court the facts in connection with
2921 that matter. A. I offered to contract with them and they stated they were already under contract. Q. Did you at any time offer to contract with them when they were not under contract? A. I never knew them when they were not under contract except the Western, when I bid on their proposition. Q. About what time was it that this occurred, this bidding on the Western business? A. They gave opportunities, solicited bids once a year. They renewed their contract yearly. Q. Can you state at this time what you offered to furnish your powder
2922 for? A. The prices varied according to the delivery points. I quoted as low as 98 cents delivered in Illinois and $1.20 delivered in Arkansas. Q. You mean delivered to their mines in Illinois? A. Delivered to their mines in carload lots. Q. Illinois and Arkansas? A. Illinois and Arkansas. The freight rates to their Western mines were heavier. They contracted at 97½ cents and I sold them at $1.08. Mr. Katzenbach: I object. By the Court: Q. (To the witness): Contracted with you? A. No, sir. The Court: Strike it out. By Mr. Abbott: Q. Do you know anything about this matter of whom they contracted with, of your own personal knowledge? A. Yes, sir. Q. State what the source of that knowledge is. A. I sat in an

adjoining room in Mr. Simpson's office when my brother called on him, representing the DuPont Company, with Mr. Spicer, and I conferred with Mr. Simpson in one room while my brother was conferring with him in the other, and I knew the proposition. Q. Was it at this time that peace contracts were made that you indicated? A. Yes. One of them. Q. Do you know what the price was which was made by the duPont Company, as represented by your brother and Mr. Spicer?

2924 That is the testimony, Mr. Waddell, concerning which you stated on Friday that you did not care to let us draw any inference to the effect that the du Pont Company made any contract with Mr. Simpson at 97½ cents. A. That refers to the consolidated trade in Southern Illinois. I don't want you to draw any inference except what I said there.

Q. You were talking about the proposition you made the Western Company, Mr. Waddell, which was the only trade open and not under contract, which you stated, as I have read, did you not? A. Mr. Simpson was general purchasing agent of both 2925 the Consolidated and Western, the same office.

Q. Won't you answer the question? Didn't you state that was the only open trade, that the rest was under contract. Haven't I just read that and didn't you so state? A. I do not think that was what I meant, the language you have just used.

"Q. Did you at any time try to contract with them when they were not under contract? A. I never knew them when they were not under contract, except the Western, when I bid on their proposition." Did you so testify? A. I bid on the Western proposition.

Q. Did you so testify? A. I think I did. I bid on the Western, and I also bid on the Consolidated.

2926 *R. S. Waddell—Cross*

Q. Then, further, in reference to this matter, Mr. Waddell, have you any recollection at all as to what you said about it in the Government case? A. No, I haven't.

Q. Did you testify in 1910 as follows: "The Western Coal Mining Company of St. Louis, with mines in Southwest Missouri and Southeast Kansas took 20,000 kegs approximately from us during 1908 at $1.12½ as against 97½ cents under con-
2927 tract with the du Ponts." Did you so testify? A. I do not know what I testified to then.

Q. Will you look at that record and state whether you so testified in 1910? A. My testimony was given I think in the east somewhere. I was away from my books and I was giving my best recollection on what it was at that time.

Q. Did you so testify? A. I presume I did if it is in the book.

Q. In this statement there seem to be four things that were not true. You did not sell them anything in 1908, did you? A. Yes.

2928 Q. When and where? A. I sold them continuously along through, I think the last was in June, 1908. The books will show what it is.

Q. Do your books show it? A. I presume they do, yes, sir; I am pretty sure of it.

Q. You say you did sell some in 1908. The next thing that is not true in here, Mr. Waddell, is that you sold them 20,000 kegs approximately. That is inaccurate? A. That was my recollection. I did not have my books with me. My books were in Peoria.

Q. No matter where you were, that was inaccurate? A. I was giving my recollection, what I thought.

Q. Was that inaccurate? A. I do not know

whether it was inaccurate or not. I haven't looked at the books here, or looked them over.

Q. So you don't know now what you sold, although you have testified here for three days. Is that what you mean? A. I said we sold approximately 20,000 kegs. That is my recollection, but it has been refreshed a great deal since I testified there.

Q. This was in 1910, within two years of the time? A. Yes, but I have been going over these books in the last few months very many times. 2930

Q. Do you know anything about what you sold; whether it was 12,000 kegs or 20,000 kegs? A. It was nearer to 12,000 kegs than 20,000; approximately 12,000 kegs.

Q. This is inaccurate, that you sold 20,000 kegs? A. I say that was my recollection at the time.

Q. But it is inaccurate? A. I think it is inaccurate.

Q. Your next statement here is that you sold at $1.12½ cents? A. Yes, sir.

Q. Now, your statement is that you sold at $1.08½? A. $1.08½. 2931

Q. Therefore, this is inaccurate? A. That was my memory only.

Q. That was inaccurate? A. That was inaccurate.

Q. Then your statement here as against 97½ cents under contract to the du Ponts was inaccurate, was it not? A. I do not know whether it was or not.

Q. Don't you know it from the letter here, to Mr. Simpson, here, that you have had in your possession all the time, so that you well knew that powder was under contract to the du Ponts, had been taken away from the du Ponts by the Ex-

celsior Powder Company two years before, didn't you know that fact? A. I knew Simpson's statement, but I also knew from their reports that they were furnishing them powder under contract.

Q. From what reports? A. The ones you furnished here, I have been looking over them this morning.

Q. When were we furnishing them under contract? A. Yes; you were under contract several times.

2933 Q. When did you discover we were under contract, this morning? A. No, not the first time; I knew you were furnishing the trade; there was a division of it between the Equitable, the du Pont and the Excelsior. Part of the time du Pont and Equitable had it alone.

Q. So now you do know that we had a contract at this time? A. I do not know about the time; I would not give you the date.

Q. Didn't you testify here on Friday that you didn't know anything about it, as to whether we
2934 had a contract with the du Pont Company at the time of this conversation, either before or afterwards, that you detailed, between your brother and Mr. Simpson? A. You asked me if I knew that that contract was made at that time and I don't know yet.

Q. And you further—— A. I don't know yet that it was.

Q. You further stated you did not know they ever made a contract after that conversation, didn't you? A. No.

Q. On Friday? A. I do not think I stated that.

Q. You did not state that? A. I do not think so.

Q. Now, let us see. (Reading): "Did you see the contract signed? A. No, I did not. Q. You

heard it agreed that such a contract should be signed? A. No, I do not think I heard that. I merely heard the figures discussed. Q. Now, I suppose you wished the Court and jury to understand by your testimony yesterday, that the du Pont Company closed that contract at 97½ cents, did you not? A. No, I do not want to say that I saw a contract made or signed, or anything else. I don't know whether they made that or not. Q. Possibly not, but you understood that that was what would have been understood by us all, from 2936 what you stated, did you not, yesterday? A. I hope not. Q. You had no such idea in view? A. I just gave you the figures that I heard discussed, and whether they made the contract or not, I do not know. Q. Therefore, as a matter of fact you don't know whether he ever did make that contract or not. A. No, I do not—yes, if you will let me tell you what I do know I can give you that?" Is that what you said here on Friday? A. That is what I said, but I did not say they never made a future contract.

Q. Then, on page 4059, didn't you say: "Q. 2937 Then you don't know anything on that subject either directly or indirectly or from hearsay, as to whether they made a contract? A. Only that Mr. Simpson told me that he had made a contract, at some time; whether it was that one or a subsequent one I do not know, with the du Pont Company, and he had also contracted with the Excelsior, and I don't know which year it was. Q. And you cannot tell whether that was a contract previous to this conversation with your brother or subsequent? A. No, sir; I don't." Didn't you testify on Friday you did not know that we ever had a subsequent contract at all? A. Is that what I say there?

Q. It is. A. I could not understand that.

Q. You just say here that you did not know anything about it and then you said you had a conversation with Mr. Simpson and then you admitted you did not know whether it referred to a previous or subsequent contract? A. Only that Mr. Simpson told me that he had made a contract at some time.

Q. Yes, and you state—— A. Whether it was that one or a subsequent one, I do not know. He told me in that letter that the du Pont Company
2939 and he had made a contract with the Excelsior, and I do not know which year it was. That is exactly what I am saying here today.

Q. The point I am trying to bring out is that when you testified in the government suit that the du Pont Company had a contract at 97½, you did not know anything about it, did you? A. I do not know that I specified any time that they had it. I testified in New York to my best recollection of matters that were in Peoria and that I had looked at for years.

2940 Q. You will at least admit that you are a little reckless in your testimony when you are on the stand, won't you, Mr. Waddell? A. No.

Q. You won't. You well understood in this Government proceeding that that would be a rather startling statement, that you got a contract with the Western Coal Company, or furnished them powder at $1.12½ as against the du Pont Company, who were furnishing them under a contract at 97½ cents. You knew that was a startling statement, didn't you? A. No, it is not a startling statement, that price netted me, $1.08½ netted me at the mills no more than the du Ponts were getting for theirs at the Kansas Mills. The freight made up that difference between 97½ cents and $1.08½.

Q. But that did not make any difference to the

consumer. The startling part of the statement was that that concern was willing to pay you $1.08½ for powder when they could get it from the du Ponts for 97½ cents, wasn't it? Didn't that strike you at the time as a startling statement? A. No.

Q. It didn't. I suppose you were selling powder right along at some 11 cents to 12 cents above what the du Ponts were charging, didn't you, Mr. Waddell? A. I have testified previously, and there was a great deal of testimony on the fact that my mills were at Peoria, Illinois, and the du Pont mills were 2942
at Pittsburg and Kansas right where these mines were located, within six or eight hundred miles away.

Q. I am willing that you make any statement that is pertinent, but what difference did it make to the customers where the mines were in that regard, I am questioning you about. They paid you, according to your story, $1.12½ when they were getting it at the time at 97½ cents, 15 cents advance on your powder. You thought that that was reasonable at that time, did you? A. The customer did not buy of me because he wanted to. 2943
He bought of me because he was compelled to. The miners held him up.

Q. They didn't want your powder at all as a matter of fact? A. And I did not want the business in Kansas. I did not desire it at that time. I did want the business on an open contract basis.

Q. Now, as a matter of fact, don't you know that after this correspondence, within a month or two, the du Ponts came along again and got a contract at $1.10, $1.15, $1.20, $1.25, depending on the location of the mines in 1908, and that was the only contract they had since the Excelsior got the business away from them in 1906? A. No; I do not know that.

Q. I call your attention to a contract produced

in evidence, 962, dated July 24, 1908, between the Western Coal & Mining Company and the du Pont Company, which seems to provide that the du Pont Company sells all future requirements of coal mines located in the states of Missouri, Kansas, Arkansas and Oklahoma at the following places:

Kansas operation, price seems to be $1.15 for 25 pound kegs, and 65 cents for 12½ pound kegs; the agreement being that the du Pont Company shall make an allowance of five cents each to the party
2945 of the second part for empty kegs of its own manufacture. That is for the Kansas operation.

For the Missouri operation: In 800 keg lots, 25 pounds each, at $1.15; for the Arkansas operation, in 800 keg lots, at 25 pounds each, $1.25; and for the Oklahoma operations, in 900 keg lots, 25 pounds each, $1.25. That appears to be the fact, doesn't it, Mr. Waddell? A. I will accept your reading of it; they ought to get that.

Q. On Friday I questioned you about where you obtained $17,000 above the amount of your capital stock, which you say went into the cost of your
2946 plant, and you testified as follows: "Q. Where did you get that $17,000 above your capital stock? A. My recollection is that we made a profit the first year of something like $12,000 in the business, and we never paid it out. We used it; it went into our plant and we had a current indebtedness additional to the direct loans, permanent loans from banks. Sometimes our indebtedness would run $25,000 or $30,000. We were using that capital." And then I stated that I would call your attention to what you had stated on that subject in your testimony in New York. Did not you testify as follows, in New York: "Q. Where did you get the balance of the money, was there a mortgage? A. No; no mortgage. Some of our stockholders were wealthy men and bankers, and we thought we could increase our

capital from $55,000 to $100,000. It was known that all of it was to go into the plant. It rated our capacity at about 1,000 kegs per day and it would require all of that capital. Then there was a question as to whether we should increase our capital to $200,000, to give us a working capital, or whether the stockholders should supply that working capital. Our people at Cincinnati were officers of very large banks, and they were of the opinion that it would be better to keep our capital down to $100,000 than to take the money from the banks at 2948 Cincinnati," etc. Did you so testify? A. Yes; that is that permanent loan that we made for $52,000.

Q. Therefore, you did get $17,000 from a loan? A. I testified the other day that we made a permanent loan of $52,000. Now, whether any particular one dollar bill out of the earnings or not, or whether it was out of the current business, I do not know what made up the $17,000.

Q. Well, you testified that you made $12,000 the first year. You recollect testifying as follows in New York at page 88: "Q. Did the company ever 2949 make any money, Mr. Waddell, from the beginning? A. Yes; we made a dividend the first year, but did not pay any. I think we earned, to my recollection, about $16,000 of the $100,000." Did you so testify? A. That is my recollection at the time, and I have looked at the books since.

Q. This was on the 12th or 13th of September, and there is a difference by some 25 per cent between your recollection then and now, is there not? A. I testified that my books were then in Peoria.

Q. Where were your books in February, 1909? A. I think they were in a storage warehouse at Peoria, February, 1909.

Q. Do you recall on that date while you were testifying to a number of things, making the fol-

lowing statement, according to the record, at page 889: "A. No. The Buckeye Powder Company never made any profit. There was no profit in the business, in our mill, not one cent a keg. We never declared any dividends." Did you so testify? A. Yes; we never declared a dividend.

Q. Did you testify there was no profit in the business of your mill, and that the Buckeye Powder Company never made any profit? A. Yes.

2951 Q. And I ask you if all three of those statements are true, if they are likewise true; are they not? A. Yes; they were all true.

Q. You testified on your direct examination as to a certain amount, I believe, approximately, thirty cents, that you considered to be a fair profit that any manufacturer of powder should receive on each keg of powder; it was so long ago—possibly I had better refer to just what you said in that regard. Page 1945. The question was: "Now, what in your judgment, is a reasonable and fair profit, or was a reasonable and fair profit, for you

2952 to have made from such powder as you sold while you were manufacturing black blasting powder during the years 1903 to 1908, inclusive?" To which, after some discussion with counsel, you answered: "A. Approximately, thirty cents, but it would be impossible to make a great variety of prices in a given locality with the addition to thirty cents of the freights, so that it has always been the custom to fix prices for a district, so I have followed the same procedure to fix prices of $1.20 for the State of Illinois, which would approximately make thirty cents in every particular, and the average would be thirty cents." Now, by that testimony I suppose you mean that would be a fair and reasonable profit on each keg of powder under normal

conditions, do you not? A. In ordinary business conditions, yes.

Q. Ordinary, free and open business conditions? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. That is, under those conditions, in the absence of anything which you, possibly, or the Sherman Law are pleased to designate as restraints of trade? A. Yes, sir.

Q. Now, that estimate on your part is a pure estimate and guess, is it not, Mr. Waddell? A. 2954
No; that is based on my judgment of the business—it is based on my recommendation to the du Pont Company, to the Associated Powder Companies—it is based on your price list to-day.

Q. Is it based on any actual experience? A. Yes, sir, experience of years.

Q. When has there been a time, Mr. Waddell, in which, according to your claim, the conditions have prevailed under which that profit is fair and reasonable, namely, conditions that were not restrained? A. There never was a time, according to 2955
my knowledge of the business, when the profits were not——

Q. Wait a minute. I asked you when the conditions prevailed such as you have applied this estimate to when there were no restraints of trade, as you claim; when was it? A. When there were no restraints of trade?

Q. As you claim? A. When there were no independent mills, and no disturbed districts.

Q. When was that? A. In 1886 to 1892, excepting the little district in Pennsylvania. There were no disturbed districts, and the prices were higher. During 1892 to 1896, during the competitive times the prices were low.

Q. During what times? A. During 1892 when

the Equitable was built, to July 1, 1896. After July 1st, 1896, up to the building of the Indiana plant in 1898, the prices were high, went up 25 cents a keg in one day on a telegram.

Q. I simply asked you—— A. When the independents are in the field and there is a disturbed district, then these conditions prevail. When there is not, harmony rules and the prices are high and always have been.

2957 Q. Which of those conditions is the normal condition to which you referred when you estimated thirty cents a keg profit? To which of these two, when there was competition or when there was not? A. I should say the normal condition in the history of the powder association clear down has been when the prices were high.

Q. So therefore, your understanding of normal conditions is when they all got together and made some price agreement and fixed prices? A. Yes, sir.

2958 Q. And it was under those conditions that you expected to reap thirty cents profit? A. No; I expected to compete in the open market, and I thought it was as low as it would go.

Q. Well, you expected, when you built your mill, that on account of what you had supposed was the fact, that these companies had gotten together in December, 1902, as a result of the efforts of yourself, among others, and raised prices on powder which would be maintained, you could go out and make thirty cents profit under what you now describe as normal conditions; was that not what you were relying on at that time? A. No, I relied on the fact that I did not believe that the powder associates would cut the prices on three millions or four millions of kegs of powder in a centralized district and drive me out of business.

Q. And they never did, did they? A. Yes, sir, they did.

Q. You swear they did? A. Yes, they did.

Q. I do not yet understand about these normal conditions in which there was no restraint of trade during this period. I understood you to say that there has never been a time since 1871 when conditions were not restrained. Did you not so testify? A. There has never been a time since 1871.

Q. When there was not an association or contract or something else which you say was em- 2960
ployed in restraint of trade? A. Yes, sir. They had their breaks among themselves; they were not always a unit.

Q. There has never been a time when something of that sort has not been in existence, according to your claim? A. Yes, sir, there has been a time.

Q. When? A. During 1883 to 1886, on rifle powder, particularly. During 1883—1882 to 1886, on blasting powder. There was in a little disturbed district central in Ohio as against King's mills, the Ohio Powder Company; there was a district, a dis-
turbed district, and open prices, but outside of that 2961
the entire United States held the price at $6.25 up to $7.50, on rifle powder, when I was selling it at $2.15.

Q. Now, in that little locality, in the district disturbed, where there were independents, there was an open market.

Q. You call that normal, do you? A. No, that was a fight against Ohio and King to drive them out of business.

Q. How about the period from 1892 to 1896? A. That was the crushing out of the Equitable, Phoenix and Chattanooga.

Q. Was that a normal period? A. No, that was vicious.

2962 Q. That was a contest by this association under this agreement of 1889, against the Chattanooga, the Phoenix and the Southern? A. Yes; they were invading the trade and trying to sell their powder on the market, and they drove them out.

Q. That was not a normal condition then? A. No, nothing normal in the trust.

Q. Then there was nothing normal since 1871? A. No; rule or ruin.

2963 Q. Then your estimate of 30 cents a keg under normal conditions must be entirely assumed and not founded upon any experience, is that right? A. No. I gave Mr. Moxham my judgment when he asked it as to what was most fair in the way of price for the central district, that is, Illinois, Indiana and Ohio, and I named $1.25.

Q. Any such price as 30 cents profit under normal conditions, that was your statement? Now, what experience did you ever have in such conditions that led to any such price? A. Just after the 1st of July, 1896, and prior to the building of

2964 the Indiana plant, possibly two years, or a year and a half; certainly six months before the Indiana Company was formed, the price of $1.25 prevailed through the Central States, and I thought that was a fair price.

Q. I did not ask you what you thought.

The Court: It is with reference to normal conditions.

Q. Was that a normal condition as you claim it? A. No; I should say it was abnormal; the trust was in power.

Q. Very good; now you have answered my question. A. I am talking about the normal price.

Q. I am talking about normal conditions, and I think you know it, Mr. Waddell. A. There has

never been a normal condition since the organization of the powder association in 1872.

Q. Very good; then will you state whether or not your estimate of thirty cents could have been based upon any actual experience in the trade, in view of the fact that there never was any normal condition, as you claim? A. Actual experience and judgment of what is——

Q. Where is the actual experience when you say in the next breath that there never have been any normal conditions? A. Well, I think there were 2966
conditions that in my judgment were fair conditions.

Q. When were they? A. One that I have named you, when the prices were fair.

Q. That is from 1896 to 1897? A. July, 1896; at the time the pool was formed.

Q. Then you think it was fair? A. I think the prices were fair.

Q. But they weren't normal, were they? A. I don't know what you mean by normal prices; we have been talking about normal conditions.

Q. Now, using it in the same significance that 2967
you have used it? A. It is a normal price under an abnormal condition.

Q. Yes; and you base that judgment upon nothing except your judgment and upon no experience? A. Upon my business judgment and experience of many years.

Q. Very good; if you will limit yourself to it being simply a matter of your estimate, we can cut this short, Mr. Waddell, instead of being something based on actual experience. A. Experience and my judgment.

Q. Where is the experience; now we want it all, because it is an important matter.

The Court: Do you mean personal ex-

perience, being conversant with the trade, or do you mean experience with trade conditions?

A. Experience in the sale of powder and my knowledge of what are reasonable and fair profits in the powder business, my knowledge of the cost of making powder and of the conditions under which it is sold—in my judgment based on my opinion, based upon experience, that is, upon study
2969 of the question for years, that a dollar twenty-five is not an excessive price for powder in the middle states.

Q. I understand what your judgment is, Mr. Waddell. A. And that judgment grows out of an experience; it doesn't grow out of the fact that I sold powder when I went into the business at three forty, the same powder—I think that was excessive.

Q. But won't you admit that it does not grow out of any actual experience under normal conditions, Mr. Waddell? A. Well, I have never seen
2970 what you call a normal condition in the United States since 1872.

Q. Well, I haven't called it either one way or the other; I think I have possibly, but I have not seen what you call normal conditions; that is the trouble. I understand you testified on many occasions that there never has been any such condition since 1871, haven't you? A. Excepting when the associates were fighting among ourselves; then we got down——

Q. Then it was normal? A. It was normal; yes.

Q. Very good; that was, we will say, from 1890 or thereabouts to 1896—one period, wasn't it? A. No; during that period they were fighting Equitable and Phoenix—1892 to 1896; between 1890 and

1892, I should say, there might have been districts where they were competing with each other.

Q. Now, you spent a good many days on the stand, Mr. Waddel, and made a number of complaints about conditions as you found them from 1903 to 1907 in the powder business, which you think prevented you from making a success. Now, as I understand it, you would have had no reason to complain if certain other conditions had prevailed, but you said very little about what those conditions were, and we would like to ask a few 2972 questions on that subject. As I understand it, you would have had no complaint, assuming that there was no bond, contractual or otherwise, between the duPont Powder Company and these old associates in the black powder business, such as the Austin and the Equitable and the American and so on. If that was eliminated, which you claim to have existed; further, if there had been no corporation formed, like the Phoenix and the Chattanooga and the Laflin & Rand and the duPont Company into the E. I. duPont de Nemours Powder Company, 2973 and that each of the corporations which you now claim are bound together either by understandings or by corporate bonds, had been free and trading under its own name and running its own plant, as I understand you, under those conditions the Buckeye Powder Company would have had nothing to complain of; is that correct? A. Yes; the chief thing that it would have to complain of—the one thing that put the Buckeye Powder Company out of business more than the cut in prices.

Q. Now, one moment; you have answered the question; is this part of your answer or is it on some other subject? A. No; you are asking me as to whether or not there was a condition.

Q. Oh, no; then you misunderstand the question, Mr. Waddell.

The Court: Your contention is that he misunderstood it; I think the question was involved; it was to me, any how.

Mr. Button: I will waive it and try again.

Q. You have said much about conditions as they ought to have been, Mr. Waddell, during this period. Now, as I understand you, there should have been no relationship between the duPont Company and the old associates, for instance, the Equitable
2975 and the American, and the Miami, which possibly you claim actually existed; is that correct? A. I don't know that I—I have not made any statement in regard to that.

Q. I know you haven't but I want you to; you have complained of conditions as they were. Now, I want to know what the conditions should have been. You say first there should have been no relationship between those companies. Should there? A. No; I have not said that there should be no relationship between those companies. I did
2976 not care anything about the relationship; it was the acts of the company that I complained of.

Q. That would grow out of some relationship between them, wouldn't it? A. I should think so; they were a unit.

Q. That is the Equitable and the Aetna and the American? A. Their wrongful acts is what I complained of.

Q. And their relations to the duPont Company? A. Yes.

Q. Then the next thing is, you, I suppose, claim that the duPont Company should not have bought out the Laflin & Rand and combined those interests? A. I think that was an evil to the company.

Q. Of course, there should have been no price understandings, or agreements? A. No; I would not say that; I think reasonable understandings

conducted along just lines and within the limits of the law are proper.

Q. Can you tell us what those limits are, Mr. Waddell? A. That is what the court is trying to find out now.

Q. Well, then you have testified that the territory that you sold powder in was the western part of West Virginia, Ohio, Indiana, Northern Kentucky, Illinois, Iowa, Missouri, a part of Kansas, Nebraska, Colorado, Wyoming, Montana, Wisconsin, Minnesota and Michigan; now, under the conditions that would have existed as we have been mentioning, you would have been competing with the following concerns in some part of that territory, each one running an independent plant, would you not: the Senior, the Burton—if I name any that you say you weren't competing with, you stop me—the Senior—you understand the question, Mr. Waddell? A. Yes; very little with Burton. 2978

Q. But somewhat? A. Very little.

Q. The Rand—didn't they sell a lot of powder in Illinois? A. I never knew but one sale the Burton made while I was in business. 2979

Q. Haven't they got an office in Chicago now? A. They have now; yes.

Q. Didn't they have during some of this period that you were selling powder? A. No; not while I was in business.

Q. They find no difficulty in selling powder there now, do they? A. Prices are high now.

Q. Well, they are selling there now? A. Yes.

Q. Well, the Senior would have been an independent company, running an independent plant, would it not? A. Yes; but it was at Cincinnati, and its trade ran into West Virginia chiefly. I knew the Cincinnati trade thoroughly.

Q. It would have competed with you? A. Well, at a disadvantage, yes.

Q. The Burton—that was an independent company, and the Rand of Fairchance was an independent concern? A. All of those companies were in existence only a small part of the time.

Q. Well, during a portion of the period? A. During a portion of it.

Q. The Oriental, Fairchance? A. I don't think Oriental could reach my territory where I sold.

Q. The Rand of Knoxville? A. Certainly not.

Q. The Egyptian? A. Part of the time.

2981 Q. The Excelsior? A. In the extreme western section.

Q. And the United States? A. The United States; yes.

Q. Well, there would have been six independent companies, each with a plant? A. Not all independent.

Q. I say, they would have been under the conditiont that you call ideal, no bond between any of them? A. If they hadn't been bought out.

Q. Very good; that is what we are talking about.

2982 There would have also been these numbers of the association; the Kings would have been an independent company, with a plant where? A. That was the King Mercantile Company.

Q. I am talking about the King Powder Company; they have a blasting powder plant, haven't they? A. Well, the Laflin & Rand have sold their output for twenty-five years.

Q. I move to strike the answer out. A. You are asking me if they were competitors. They were not.

Q. I am not asking you that; I am asking you if they would have been under these conditions which you claim didn't exist; I want to find out what would have been the conditions: the King would have been an independent company with a plant near Cincinnati, wouldn't it? A. Yes.

Q. And would have been competing as an independent concern, wouldn't it? A. Yes.

Q. Likewise, the Miami, with two plants, where? A. Golds Station, Iowa, and for a small portion at Thebes, Illinois.

Q. And the Equitable with a plant at East Alton would have been an independent company competing for this business? A. At East Alton.

Q. And the Austin, an old established company, with a plant where? A. Cleveland, Ohio.

Q. That would have been competing as an independent concern, would it not, under the condition we refer to? A. Not much in Illinois. 2984

Q. Isn't the Austin always selling powder in Illinois? A. I only know one customer.

Q. Who? A. Well, that is a small concern near Danville, Illinois.

Q. Don't you know well enough that you got Brechnitz trade away from the Austin Powder Company by cutting the price from $1.35 to $1.15? A. I certainly didn't.

Q. You didn't? You didn't know it, or isn't it a fact? A. It is not a fact; no; they were the agents of the Oriental Powder Mills. 2985

Q. Well, the Austin sold powder in Indiana, didn't it? A. I don't know what they sold in Indiana; most of their trade was in northern Ohio, western Pennsylvania, and in——

Q. Didn't they sell powder in Ohio, Indiana, Kentucky, Tennessee, West Virginia and Missouri; don't you know that from your experience of twenty years in this business, Mr. Waddell? A. I know that—no, I don't know a customer the Austin Powder Company has in the State of Kentucky. I never did know. I know they have got one down in Texas.

Q. Don't you know from your experience? A.

They don't scatter out much; trade is concentrated in northern Ohio, and the richest coal field in the world around Pittsburgh.

Q. So you don't know from your experience in this business that they spread their powder all over the middle west for fifteen years? A. I know they have in rifle powder.

Q. In blasting; I am talking about that. A. No; I don't know that.

Q. You don't know that as a fact; don't you
2987 know you came in contact with it in competition for fully twenty years that you were in Cincinnati all through the middle west—blasting powder? A. I didn't go to the extreme west.

Q. Well, the middle west? A. Central Powder Mill of Illinois and only a small part of the trade; they didn't have much trade in Indiana. I never knew a customer——

Q. Well, confine your answer to what is in that territory; don't you know that they sold their powder all through that territory for twenty years?
2988 A. I knew of one customer on the Baltimore & Ohio Railroad west of Cincinnati and they had one down near Evansville—two customers in the State of Illinois is all I know of.

Q. Outside of Illinois? A. I only knew of two customers of the Austin Powder Company.

Q. During your twenty years' experience? A. In Indiana; yes.

Q. Did they have agencies and offices at St. Louis and Chicago? A. I don't know whether they had or not.

Q. If they did have, would that be for the purpose of selling powder in northern Ohio? A. Well, they might have sold rifle powder; they might have sold Austin shells.

Q. At the present time you don't know quite so

much about the general powder conditions as you did on your direct examination, do you, Mr. Waddell? A. Yes; I do.

Q. However, the American Powder Company could have been competing through this district under the conditions we are discussing, could it not? A. Under normal conditions?

Q. Yes. A. No, no; they didn't own any powder mills making black powder.

Q. Do you think it would have been improper for them, for one concern to buy powder from various people and market it through that district? A. Yes; with a five per cent. in a pool——

Q. I am talking about a condition without any pool, Mr. Waddell; I want to know what the conditions would have been when you were going to get this thirty cents a keg. A. I don't think at a fair normal price that there would have been a chance for a middle man like the American Powder Mills—not an inside dealer.

Q. Well, the thirty cent profit would have put the price up to a reasonably high point so that there would have been a chance for a middle man, wouldn't it, Mr. Waddell? A. No; the profits would have been very heavy at $1.20.

Q. About thirty cents? A. No; that would have been all profit.

Q. Then, under these conditions, the Phoenix Powder Company would have been an independent concern with three mills, wouldn't it? Where would they have been? If they hadn't been owned by the others, If they had never been amalgamated in any way—kept along as they started out—this is one that you say we killed off, the Phoenix? A. Yes.

Q. That would have been an independent company, and where would its mills have been? A. At Phoenix, Illinois.

Q. That is near Belleville? A. Yes.

Q. Another mill at Kellogg, West Virginia? A. Yes.

Q. Reaching some part of the territory that you sold in, wouldn't it? A. No; I think not.

Q. You gave West Virginia, a part of it, as part of your territory? A. A very small part of it.

Q. But some part of it? A. They might have reached a few customers.

2993 Q. Where is Kellogg, West Virginia? A. It is reached near Huntington.

Q. Well, which part of the state? A. The western part.

Q. The extreme part of it, isn't it? A. On the Ohio River; yes.

Q. Therefore, it is in the part of West Virginia that you would have reached if you ever reached any part of it, isn't it? A. Well, that is almost inaccessible; it would at $1.20 be inaccessible.

Q. Well, you sold powder there, however, didn't you? A. I think I sold one carload; maybe two—

2994 two carloads.

Q. Then there would have been the New Jersey mill of the same concern, the Phoenix; they had one in New Jersey, didn't they? A. Yes; they had one.

Q. They had three mills? A. Yes.

Q. The company would have been operating those three mills as an independent concern and competing? A. Not with me; no.

Q. Well, their Illinois mill would have competed with you, wouldn't it, at Belleville? A. Yes.

Q. Brechnitz was living within ten miles of Belleville, wasn't he? A. Yes.

Q. Now, the Ohio Powder Company concern would have had a mill at Youngstown, Ohio, and it would have been an independent concern and

competing for this business, wouldn't it? A. Yes; in the eastern section.

Q. And the Chattanooga Powder Company would have had a mill in Tennessee and would have been shipping powder through Tennessee and Kentucky, and possibly West Virginia, wouldn't it? A. No; it couldn't reach it.

Q. Missouri? A. No.

Q. It did, didn't it? A. No; it didn't.

Q. Never did? A. Well, there might have been during the year when they were driving it out; he 2996
may have sought foreign markets; freight rates were against them.

Q. One of their chief strongholds was in West Virginia? A. No.

Q. Didn't they capture a large portion of the trade in West Virginia? A. No.

Q. They didn't ever? A. They had a little trade in old Virginia.

Q. But none in West? A. No.

Q. The Birmingham Powder Company would have been an independent concern with a mill at 2997
Alabama? A. Yes.

Q. And that would have reached of the states that you mention? A. Not many of them.

Q. Not Missouri? A. No.

Q. West Virginia? A. No.

Q. Why couldn't it ship to Missouri? A. The freights were prohibitive, and anything like a fair cost——

Q. Didn't you sell in Alabama, Mississippi and those southern states yourself? A. Yes; and paid $1.40 freight and sold at 85 cents a keg.

Q. They did occupy a territory that you sold a little powder in then, didn't they, Mr. Waddell, and they would have been independent; is that right? A. I am speaking now of the Hazard Com-

pany. If I sold down there, I never sold a keg of Buckeye powder.

Q. Oh, well, I am speaking of the Buckeye. A. No; I never sold any Buckeye down there.

Q. Now, the Lake Superior Powder Company would have been an independent concern with mills in the Marquette District, with plants there competing, wouldn't it? A. In a small section, yes. They could not reach out far from the northern peninsular of Michigan.

2999 Q. Then, during the entire period until they blew up in 1907 the Indiana Powder Company would have had an important mill at Fontanet, and would have been operating as an independent concern, wouldn't it? A. Yes; but if Indiana discontinued, the United States would not have been built. That was built by the same parties.

Q. Oh, that was built by the same people? A. Yes.

Q. I suppose conditions would have been so prosperous that they would have built more than one, Mr. Waddell? A. They were coal operators and

3000 they wanted a mill for their own use.

Q. Now the Northwestern would have had a mill there and been an independent company, wouldn't it—gone on and competed in the market of your district under the conditions we mention? A. They were very near Terre Haute, yes; they would have made powder for their own stockholders.

Q. Then the Southern Powder Company would have been in existence as an independent concern, would that have reached your territory? A. No, they have bought those mills and torn them down.

Q. Would it have reached the territory you trade in? A. Oh, no.

Q. It would have shipped rifle powder all through the territory, wouldn't it? A. No.

Q. Didn't it? A. No, they reached Cincinnati

once to their own stockholders, but it was a failure.

Q. Then under these conditions the du Pont Company would have been an independent concern with a plant at Moor, Iowa, a large plant in the middle of your district, wouldn't it? A. Yes.

Q. And another one at Nemours, West Virginia? A. That was out of my district.

Q. It would reach this West Virginia end of your trade, wouldn't it? A. No, that is at the extreme eastern end of the Norfolk & Western road in the coal fields; it would reach Kanawha. 3002

Q. And the du Pont plant at Fairchance; it would have had a plant there competing, wouldn't it? A. No, that is the Oriental Powder Mills.

Q. They would have had a plant at Paterson, Oklahoma, that would have competed in Kansas and Nebraska, wouldn't it? A. Kansas and Nebraska, no; they wouldn't go to Nebraska; they would have taken in some trade in Oklahoma; they couldn't have gone into southern Kansas against the mills located there; they couldn't have gone into Arkansas with the Equitable Mills at 3003
Fort Smith; they would have had a local trade in Oklahoma.

Q. And then there would have been the Brandywine plants that could have been used as emergency plants, shipping powder west, would there not, owned by the du Pont Company? A. No.

Q. But they did ship west occasionally, didn't they? A. Yes, but that is out of date, the Brandywine mills of the du Ponts is entirely out of date.

Q. Then there would have been the Laflin & Rand Company operating as an independent concern with a mill at Pleasant Prairie, wouldn't there? A. Yes, until it blew up.

Q. And two in Kansas, one at Turk and the other at Columbus? A. Yes, sir.

Q. And also their eastern plants? A. Also which?

Q. Their eastern plants? A. Their eastern plants could not compete.

Q. Now, you state in your declaration that "during all of said period its business was interstate and conducted in the states of Illinois, Iowa, Indiana, Ohio, Michigan, Minnesota, Missouri, Montana, Nebraska, Colorado, Wyoming, West Virginia and Indian Territory, did you not? A. I
3005 don't know what the declaration states; I read it, but I don't recollect.

Q. Don't know; well, who is responsible for that statement as to where you sold powder, do you know? A. Well, I presume I was in the main. In the territory in which I made the general statement, one point you omitted there in that declaration where I have sold a good deal of powder is Texas—El Paso. I went down into Mexico

Q. I may have omitted it; I don't think it is mentioned there. It may have been an omission. Just
3006 now I want to ask you, Mr. Waddell, whether in your judgment, under the conditions you have outlined, with these numerous companies competing, one with the other in this district, each having its independent plants, with no arrangement between any of them whatsoever, all after the trade—I wish you would state whether, in your judgment, there would have been a profit of thirty cents a keg on blasting powder at any time during 1903 to 1908? A. I think there would; I don't mean doing business the way you describe.

Q. You think they would have made a trade agreement; is that what you mean? A. No, there are understandings as between two merchants in any city; they are not reckless if they are business men.

Q. They respect each other's trade, is that what you mean they would have done—you mean they would have respected each other's trade? A. No, I think they would have known about what the price was that would have given them a fair profit, and neither of them would have cut, and the tendency of business men is to discuss those questions frankly with each other, not necessarily making a pool.

Q. Therefore, your conclusion is, Mr. Waddell, that they would have talked it over and it would 3008
have been a great deal better situation with all those companies competing that you would with only a part of them, is that your judgment, as the greatest living expert in the powder business? A. I deny being the greatest living expert in the powder business.

Q. I think your counsel so denominate you here one day. A. I am not claiming anything like that.

(Question repeated.) A. I don't know what they would have done; I know what my duty would have been in the matter and I know it would have 3009
been just exactly the same as you have today, with the independent dynamite and powder companies in the United States; somebody would set a price and the others would follow; you don't find competition today in black powder or dynamite and there are a lot of so-called independents.

Q. Then you think that unlimited competition without some understanding or some following together by the other side is a very disastrous thing, don't you, Mr. Waddell, from a business standpoint? A. Well, a man uses his judgment in—as a rule a man who has a standing in the community enough to be selected as the head of a black powder works ought to have sense enough to not recklessly destroy prices.

Q. That is how you feel about the subject? A. He should be satisfied with a fair and just profit and treating the community justly as well as himself.

Q. He ought to have sense enough not to cut prices, you think? A. Yes.

Q. Then if it should happen to appear to be a fact, that the Buckeye Powder Company when it began to do business, went into the open market and cut under five or ten cents, you would think
3011 that was an unwise thing for them to have done, don't you? A. The Buckeye Powder Company never cut a price.

Q. I am not asking you whether it did or not, Mr. Waddell, but is not that the fact? A. If they had done it, it would have been, and it would have meant a sacrifice for them.

Q. I suppose it would have been unwise for the other man to cut back under those conditions, wouldn't it? A. Yes, I think so.

Q. And if he had not cut back the other consumers would have lost all of its profits there
3012 through it, wouldn't they? A. No.

Q. It would not? A. No.

Q. It would have lost that which you got away by the cut in price? A. There was ample new trade in my territory every year to more than absorb the entire output of my plant.

Q. You mean there was an additional consumption each year of 250,000 kegs of powder? A. Yes.

Q. In Illinois? A. Yes—Not specially in Illinois, but in my district.

Q. You said somewhere in these depositions that you have given, that it was in Illinois, didn't you? A. Yes, I think there was mention of it in Illinois, in that field.

Q. You said I think in each year, didn't you, in

your direct examination? A. I don't think I said "in each year." I don't think I said that; I think I said in one year.

Q. I think you did, but we will get to that. Well, then, I take it that it is your judgment that under the conditions that we have been discussing there would have been a profit of thirty cents a keg, is that it? A. I think there were.

Q. You think there were? A. I think it would be so.

Q. But never having experienced any such conditions then, of course, Mr. Waddell, it is a mere estimate, isn't it? A. I never knew when we didn't make thirty cents a keg excepting when we were in a fight to destroy some independent company. 3014

Q. Now, how much profit would you have gotten each year if you got 30 cents a keg, Mr. Waddell? A. I don't know.

Q. You were marketing under conditions there where you were marketing your total output? A. I should have thought that plant, taking in the exigencies of the business, considering the exigencies of the business, the dangers of the plant being entirely wiped out in a moment, as the Indiana plant was, capital entirely destroyed, I should say that a profit of $50,000 would not be excessive. 3015

Q. Then you are not willing to subscribe to a profit of 30 cents a keg straight through on your total capacity? A. Well, you would not get 30 cents.

Q. Well, you have so stated in your papers here, haven't you, Mr. Waddell? A. Well, there are a great many ways that 30 cents would go besides clear net, for instance, at the end of the year——

Q. Nevertheless, you carried it, into all those exhibits which you have been trying to get in evidence here, didn't you? A. No, I did not.

Q. Well, you had somebody do it for you then, didn't you? A. I cut that 30 cents idea when I fixed the prices.

Q. When did you do that? A. When I fixed the prices for a distance, for instance for a place in Illinois, $1.20——

Q. Then you don't think you ought to have 30 cents on 250,000 kegs, which would be $75,000 a year profit? A. I think a part of that would be used in the exigencies of the business, the demands
3017 that would come upon it.

Q. And you don't think you ought to have $90,000, which would be 30 cents profit on 300,000, which is one of the capacities which has been mentioned here of your mill, and that would be unreasonable? A. I should think that would be an excessive claim; I should be satisfied with a more moderate amount.

Q. About $50,000 on your plant which cost you $117,000, per year, you think is about right, don't you? A. That does not represent the working
3018 capital. If you are operating your plant at full capacity, making its output 250,000 kegs, you would require more than $200,000, probably $225,000. It requires very large amount of operating capital to handle that quantity of powder.

Q. In that event you would be willing to operate—you would have been unable to operate because of a lack of working capital as you have already testified you had put in all of your own moneys and had used them up? A. I had made arrangements for an amount ample for all of our requirements; and our policy was to run the plant —and by "policy" I mean you have to anticipate what you are going to do for this plant of yours months ahead. In the powder business you have got to let the contracts for your soda six months, or at least four months, you have got to allow it to

come from Chili. You have got to map out a policy of what you are going to do.

Q. We are talking about working capital now; you said you had made arrangements for $200,000 working, is that so? A. We increased our capital stock but we never issued.

Q. Did you have arrangements as to who was to buy it and who was to put up the money for it? A. Yes, sir.

Q. Who was going to take care of that? A. The understanding was that it should be largely taken 3020
up by people in Cincinnati.

Q. When was that conclusion arrived at? A. At the time that the increase in the capital stock was authorized; I don't recall the date.

Q. When? A. I don't recall the date.

Q. Well, your increase was authorized about the first of 1906, wasn't it? Your Cuba letter referring to it was in 1905? A. I don't recollect the dates; whatever it may have been it was in Cincinnati when it was arranged.

Q. It was then in 1906 and provided for a work- 3021
ing capital for an increase based on an enlarged plant, double the capital stock that you had formerly had and it must have been about the first of 1906, wasn't it? A. I should think probably about that time.

Q. Then at about that time business was pretty good; you expected to have plenty of extra work and capital also to take care of it with? A. It was good for what we were producing, in 1905, that was our busy year.

Q. Is not this the date, July 2d, 1906, when you made that increase from one hundred to two hundred thousand dollars in your charter? A. I don't recall the date.

Q. You have got a certified copy in here some-

3022 *R. S. Waddell—Cross*

where; I think that may show it; my information is that that is the date; if it is the date this statement in your letter of June 4th that you had already done it is not quite correct, is it, Mr. Waddell? A. How is that?

Q. If it was July 2d that you did that, your statement in this letter of June 4th to the Cuba Company that you already had done it is not quite correct? A. Well, I presume we had passed a resolution two or three or four months ahead so as
3023 to buy our raw material and time to put it through.

Q. Preceding this increase, there was something in business conditions in the early part of 1906 that made you think that your business was going to be increased and enlarged, wasn't there, you were encouraged? A. Well, it may have been that or it may have been some other reason for increasing it; I don't know what it was now that we did it on.

Q. It was so definite that you made arrangement —went so far as to arrange who should pay for
3024 the extra $100,000? A. That possibly arose out of the fact that the bank may have——

Q. Well, did you? A. ——that the bank may have called for their money or we wanted to get it in some other companies; I don't recall just now what caused it.

Q. Didn't you state a few moments ago that you had an arrangement with someone to buy most of this new capital stock, and take this extra capital stock—you said some definite arrangement had been made? A. We did not have any positive arrangement.

Q. You did not? A. Not positive; no; we had a tentative arrangement we thought could go through, but it didn't.

Q. Now, you have spoken of these various con-

tents; among others you mentioned one against the King and Ohio Powder Company. Now, that was about thirty years ago, was it in the early eighties? A. 1882 or 1886.

Q. Then you next refer to this Fundamental Agreement, so-called, of December 19, 1889, and I believe you said that you recollected having seen that somewhere. Do you know where that was? A. I saw it after it was put in evidence.

Q. Where did you see it? A. I think it was in New York; I don't know. 3026

Q. Government's Exhibit No. 6—and you undertook to identify some of the signatures to the document, didn't you (handing book to witness)? A. To my recollection, I think I said I knew the du Pont signatures.

Q. Well, now, what was the general appearance of that contract, Mr. Waddell? A. I did not examine it through.

Q. Was it on paper like this, legal size (indicating)? A. I don't know; I don't recall what it was.

Q. Do you remember what kind of a cover there was on it? A. No. 3027

Q. However, under that agreement you understood that these six or eight people being the du Pont Company, the Hazard, the Laflin & Rand, the Oriental, the King, the Sycamore, the Marcellus, which are the ones whose signatures you identified, unless I forget, with three or four others, got together and made some trade arrangement, is that your understanding, about December 19, 1889? A. I know a trade arrangement was made at that time—about that time.

Q. And subsequently thereto, shortly after that arrangement went into effect, these new companies sprang up: The Chattanooga, the Phoenix and the Southern, did they not? A. Yes, the Chattanooga——

Q. And then ensued what you have described as the vicious contest? A. Yes.

Q. Do you mean to be understood that there was a contest by this association on the one hand which has been formed under this agreement, and these new companies on the other? A. Yes; I knew that the contest was not between those companies, it was between those companies as a unit and the others.

Q. It was between them as a unit? A. Yes; I never could get a price to meet another price in the district, I never could get it if I stated in my letter that an associate had made a price. My companies always said, and instructed me "don't mention an associate, always put it on to an independent; if you will name an independent you can get the price"—and I got it.

Q. Ah, ha. A. Yes, I got it.

Q. And it was under those circumstances where you got permission to make prices? A. That was a general rule all through the history of the business.

Q. Where was the headquarters of this association which was conducting these contests? A. New York.

Q. And what did they do to these new companies? A. To the independent companies?

Q. Yes. A. Each company named a price to the agents and the agents would ask for a price; I wrote hundreds of letters asking a price, lower price, to get the trade from the independents, and I got it.

Q. And the association granted such permissions to you and in that way and killed off these three companies, did you? A. I don't know what the association granted, I was not present; but I inferred they did; they cut prices.

Q. Those three companies were killed off then

by or through the cuts on the part of the allied companies? A. A concentrated fight for the entire district.

Q. And a fight was concentrated and I suppose confined to the territory that you have described as "disturbed district"; is that correct? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. That fight extended from early nineties until 1896, when some arrangement was made between the various concerns? A. When all the independ- 3032
ents were rounded up, though.

Q. Oh! A. All that were in existence then.

Q. Can you remember just how high the price of blasting powder got in your district or in this district, this disturbed district, just before this contest? A. My recollection is that in Ohio our price was $1.50 a keg for blasting powder, that is, after the pool was formed. The price went down as low as eight cents part of the time.

Q. How much did it go up after? A. And there were a few sales at 75 cents.

Q. How much did it go up after that, after the 3033
fight? A. The day after the pool of 1896 was formed it went up to $1.25 throughout the district.

Q. Now, who were your competitors, you were representing then the Hazard and du Pont Company in Cincinnati, who were your competitors in that district? A. Our competitors were of two kinds. We let alone King; we didn't bother a King customer any more than we had to when they would ask us for prices. When they asked us for prices we had to quote them; we respected the trade of the other associated powder companies as far as we could; we had to make a showing of doing business.

Q. Did they also respect your trade? A. Yes, sir; very largely; they had to make a show of do-

ing business and if they were asked for prices they had to quote and we had to quote.

Q. No real effort to get the trade assigned to other associates? A. No real effort unless it grew out of some trouble in our selling work, we didn't make any real struggle.

Q. Who were your real competitors during that period? A. Our real fight was against the independents that were in the locality. The Phoenix and the Equitable got so much; the Equitable and
3035 the Phoenix had plants near the Phoenix, two plants at Conover and Kellogg, West Virginia, and an Illinois plant; and in competition with both of them; and in the southern states at Chattanooga.

Q. Now, you stated in the Government case, in regard to the Chattanooga Company, that Hazard and du Pont Company lowered their prices wherever it was necessary to hold the trade and shut out the new companies. That is correct, is it? A. Yes.

Q. And how did you know? That district was in charge of your brother, largely? A. Well, I was
3036 kept pretty well informed in regard to it. We interlapped in my territory and his, so I had to know.

Q. And you had frequent conferences and interviews with him on the subject? A. I had interviews with him and I got correspondence frequently from our New York office, his letters.

Q. And that territory is the territory that was covered by the Southern Powder Company? A. Yes, sir.

Q. A concern in Georgia? A. The Southern was an exceedingly small concern down there.

Q. But your knowledge, it came through your brother, largely, in regard to that? A. No, not altogether; partly your Major Lewis of Sycamore

Powder Company; I sold powder to the Sycamore Mills; my brother and I kept in touch with conditions as they were going on.

Q. In regard to figures, you said in the Government case you received a telegram to meet the price and hold your trade. Is that correct? A. Yes.

Q. You did do so? A. Yes.

Q. As against the Phoenix? A. Yes, I followed instructions.

Q. You also stated that prices were maintained elsewhere until the Phoenix Company came in, re- 3038
ferring to the northern and western states? A. Yes.

Q. You remember that statement? A. Yes.

Q. That would indicate that Chattanooga Company started in first, would it not, and that the disturbed district, as you called, it was confined to the territory of the Chattanooga; outside of that prices were maintained, is that what you mean? A. They did not conflict at all; the Chattanooga was in the southern states entirely, independent and away from the Phoenix, the Phoenix
was in the northern states; and I don't know which 3039
was the first in the field. We met the competition when it came in.

Q. Then that statement—you don't know whether this statement of yours in the Government record is correct or not, which was as follows: "Up until the introduction of the Phoenix powder, which, I believe, was the next brand on the market, the list prices of the associated companies was maintained throughout the northern, eastern and western states, excepting Central Pennsylvania, where a very low price was always obtained." You so testified, didn't you? A. Yes, that is so.

Q. And that was for the purpose of showing that these companies segregated the district and

cut the prices around the competition; was it not A. Yes.

Q. Now, when the Indiana Powder Company came in in 1907, the date when Mr. Rood entered in the contract system—is it not true that the powder companies had always made contracts for the furnishing of powder, blasting powder, to its consumers? A. I sold 70 per cent. of the Hazard output and I never made a contract.

Q. Well, don't you know that the various pow-
3041 der companies all sold it under contract? A. No, the system was originated at that time.

Q. Did they have contracts for the furnishing of powder? A. They may have had it, they may have had them, I never had any contracts.

Q. Why, don't you know, Mr. Waddell, you have spent twenty years of your life in most intimate association with this particular line of business, don't you know that each company sold its products that way? A. I know it was prohibited by the rules to make a contract for more than sixty days —the rules of the association.

3042 Q. Do you say they did not have contracts for their products all the time? A. Well, they may have had them, and there may have been exceptions by the Association, but the rules of the Association prohibited the making of contracts for the supply of explosives, as I stated.

Q. You spoke of, I think, the Indiana contest against Mr. Rood, you spoke of the organization of the Great Northern Supplies Company, which sold supplies to the miners. Some ambiguity in your testimony as to when that was. Don't you recollect that that didn't occur until after Mr. Rood had run for two years or two and one-half years? A. About two years, I think.

Q. What were the prices? You stated that the

prices prior to having that contract come down to us for an injury done, in that contract A. I don't remember the exact price, it is in the neighborhood of that, it was quite low enough.

Q. And that was a contract by the associated companies against him, I take it? A. Yes, it was.

Q. With whom did this contract system begin, do you recollect? A. With whom did it begin?

Q. Yes. A. The first contract that I ever knew anything about was with—was a contract that I made with Charles F. Keeler by instruction of the 3044
du Pont Company.

Q. Whereabouts—in Chicago? A. I wrote the contract in Chicago.

Q. That was the same Keeler that testified, made a deposition in this case? A. He later became a stockholder in my company.

Q. Same man whose deposition has been read? A. Same man.

Q. You stated on your direct examination that these new companies were always in disturbed districts. I suppose by that you simply mean that 3045
after they built their mills the districts became disturbed? A. Yes, sir.

Q. Is that what you mean? A. Yes.

Q. Can you tell us in what other district that was that the price was maintained during these times you testify that the rest of the prices was maintained, where was it maintained? A. Yes. The price was maintained when I was in business, as I spread out. I always gave up the local trade when it got so low that I could not make a profit on it.

Q. Yes, but what district was it where the prices were maintained outside of those disturbed districts? A. In Montana, for instance, I made a good price when I went into Montana.

Q. I am not talking about Rockers Number two, Mr. Warden, but in my mind the Rockers; I am talking about this period in the minutes, when this fight was made against the Chattanooga, Phoenix and the Southern, I want to know what districts during that time the price was maintained in outside of those disturbed districts? A. In what districts?

Q. Yes, where was it that they were maintained? A. In all the districts outside of the disturbed dis-
3047 trict.

Q. Where were they, what states, give me what particular states from 1890 to 1896, we will say, during this contest against the Southern, Chattanooga and Phoenix? A. That fight extended as far east, it took in——

Q. Don't put it that way, just give us the states in which this high price prevailed. A. All of the states—I can except it better than otherwise.

Q. All right. A. I would have to name a good many states.

3048 Q. Go at it that way. A. The Western Pennsylvania, Western New York, west of Buffalo, and south of Buffalo, the whole of West Virginia and about three counties in Old Virginia tributary to it; Tennessee, Southwest Virginia, Georgia, Alabama, Mississippi, Kentucky, Ohio, Indiana, Michigan, Illinois, Iowa, Missouri were the disturbed districts; outside of that, with the possible exception of the competition that arose from another company——

Q. What was that? A. That was Pittsburgh mills; your Park mills.

Q. What company was that? A. The Pittsburgh country went in, out there——

Q. What company was that, I say? A. I don't recall the name of the company; it was a small

one, it was not a very large one, and it was not out long; it was brought up by Laflin & Rand. That company that caused the disturbance in that section, and beyond that there was no cut in price in that section.

Q. Now, just one thing more in that connection, Mr. Waddell, how did you know that those prices were maintained in those places? A. I know they were maintained as far as I came in contact with them.

Q. How did you know—how far was that? A. 3050
Well, I came in contact with the prices, I was asked to quote prices outside of my territory and it was prohibited.

Q. California—were you asked to quote prices in California? A. Yes, I had a proposition to buy a carload of rifle powder that was sold at $2.15, at a price of $1.15.

Q. Let us confine ourselves to blasting powder for the moment, Mr. Waddell. A. How is that?

Q. Let us confine ourselves to blasting powder, which is all we are talking about up to date. A. 3051
All right. I had opportunities to sell blasting powder to the trade outside of the district. Trade would hear that the prices were very low in our district and they would write to us to get quotations.

Q. Did you sell any powder to trade in New England or New York yourself? A. No, but I knew of the sales there at that time. I talked to Mr. Ketchum of the Hazard mills as to the conditions around the mills, and he was selling all over New England.

Q. Now, Mr. Waddell, you were very familiar with this trade during this period, and don't you know that that particular impression you created regarding that period from 1890 to 1896 is incorrect; and that those concerns never made an at-

tack on Chattanooga or Phoenix or the Southern; don't you know that to be a fact? A. No, I don't.

Q. Don't you know it to be a fact that those concerns came into business, cutting way under the prices of the older companies, the du Pont and Hazard—don't you know that to be a fact? A. In some cases they did.

Q. Don't you know it to be the universal fact? A. No, not the universal fact; no.

Q. Don't you know that the older companies did
3053 nothing whatever for two years, not even meeting those prices, went on losing trade all through that district, don't you know that for a fact? A. I know I gave them some trade, I did.

Q. Don't you know it is a universal fact to your knowledge? A. No.

Q. You took no aggressive tactics against these other concerns, didn't you know that, for a long time? A. No, I didn't.

Q. Don't you know for a fact, Mr. Waddell, this further fact that they never did any more than to meet the prices made by the Phoenix, the Chatta-
3054 nooga and the Southern during that period? A. Meet them only?

Q. That is all, didn't you know that? A. Certainly not.

Q. How much did they cut then? A. Cut whatever was necessary to take the trade, take the customer.

Q. How much was that? A. We had the ability, the powder companies had the ability——

Q. How much was that cut, I don't care what the ability was? A. Cut so—whatever it was necessary to get the trade.

Q. What did you say that was, how many dollars or how many cents? A. Five cents to ten cents a keg, whatever was necessary to get the trade.

Q. Now, that cutting began on the part of the older companies when? A. It began about the time the powder was put on the market; sometimes a little in advance.

Q. That would be in 1892, so far as the Chattanooga case was concerned, wasn't it? A. I don't recall the dates.

Q. Approximately? A. Ninety to ninety-four.

Q. It would be 1891, as that was the time the Phoenix Company came in? A. I think that is the time that they came in. 3056

Q. And the Southern about the same time? A. They are ninety-two, we will say, or about in there, something like that.

Q. They immediately began to cut away under these prices, I suppose you intended to say? A. Well, we went after the trade, all right.

Q. And, as you have expressed it, you shut them out? A. Yes.

Q. Is that your signature, Mr. Waddell (handing paper to witness)? A. That is my name, I don't know whether that is my signature or not.

Q. Look at the letter. A. Where is it from, Cincinnati? A. (Examining paper). Cincinnati, yes, that is my signature. 3057

Q. A letter you wrote the Hazard Powder Company? A. I presume so, yes, sir.

> Q. (Reading): "Cincinnati, February 20, 1891, the Hazard Powder Company, 63 Pine St., New York. Dear Sirs: I enclose you copy of a letter from Mr. Rood relating to J. D. Sourwine, Agent, for Phoenix Company, Brazil, Indiana,"——

Q. Well there, that shows that the Phoenix Company was selling powder in February, 1891, doesn't it, Mr. Waddell? A. Yes.

Q. "I also enclose Mr. S.' business card, which states: 'We are independent of the combination.' Mr. Sourwine has sold Brazil Block Coal Company three cars; Nickel Plate one car; Bryson one car and for general distribution, one car. That is some 5,000 kegs displaced at Brazil in favor of Phoenix." Whose powder was it that was displaced in place of Phoenix? A. Sourwine was——

Q. He was the Phoenix agent, Mr. Waddell? A. He was the Phoenix agent.

3059 Q. This says so and he had displaced five carloads of powder by some Phoenix to those customers? A. I should judge that as I recollect prior to that time he had been an agent of the du Ponts, I don't know, but I should say so.

Q. Can you state what powder these five customers—those customers had been buying before they bought this Phoenix? A. No, sir.

Q. (Reading): "The Bob Andrews that Mr. Rood refers to, is a particular friend of ours, Manager of Lancaster Block Coal Company. The people who are discussing
3060 the new powder mill, referred to by Mr. Rood, are the same gentlemen that mentioned it to me a few days ago. I think it will be built about Terre Haute on capital of $100,000. Would you like to have Mr. Rood attend the meeting and get the particulars? Do you desire to take any action regarding Phoenix? I presume with all the companies and their representatives in an antagonistic position to each other, there is no means of concentrating defense against any one; however, you may have determined upon some plan and are prepared to instruct me.

Yours truly,

R. S. Waddell, Agent."

3061

Q. Now then can you tell what powder had been displaced by these 5,000 kegs of Phoenix Powder at Brazil? A. No, I don't know; I didn't know the trade in Brazil for Hazard, I did not at that time represent du Pont, du Pont I think it was and his letter——

Q. Mr. Rood was travelling for you, wasn't he? A. He was travelling for the Hazard, yes.

Q. And it was on account of his report to you that you made this communication, wasn't it? A. (No answer.)

3062

Mr. Button: Possibly I had better read Mr. Rood's letter. This is from "Louisville, Kentucky, February 19, 1891, R. S. Waddell, Agent.

Dear Sir: Enclosed you will find J. D. Sourwine, Brazil, Indiana, card which explains for itself. Sourwine is trying to cut up a furor at Brazil, Indiana. Has sold Brazil Block Coal Company three cars—Nickel Plate Coal Company one car—John Bryson, Hardware Merchant, one car of powder, and is selling a car out by small quantities. He sold to Perry 100 kegs at $1.48, so Perry says, and Perry sold it to the Shelbourne Coal Company at $1.48 per keg. I saw Sourwine at Terre Haute on Wednesday and he was feeling splendidly, yes, good. Said he was going south to sell powder, meaning Southern Indiana. I put Bob Andrews on to him and he wanted to sell Andrews and said if he would give him an order for a carload, he, Sourwine, would make it a few cents less than $1.48, but not much, but intimated 2 per cent. for cash and three cents. This information is correct and can be relied upon, and I feel that

3063

Sourwine must be stopped or we will have to meet him. It matters very little about our mills not having the powder to ship, and there may be a stiffness felt at the mills, but now is no time to feel unconcerned in regard to keeping our trade, for our refusing to meet his figure is equivalent to our saying to our customers, 'Go and buy of Phoenix' when we cannot say we will meet his figures. Bryson is now going for the
3065 miner's trade in the same way that Ingle is being antagonized and the operators are working up to a high standing. I was asked if I would go in on a powder mill. I asked, with whom—they said that five parties had had a meeting and that there would be a larger meeting in the future, some time within two weeks. When the meeting is called I will be telegraphed a day or so ahead so I can be at the meeting, and in this way can stand on the inside and know what is done.

3066

Very respectfully,

(Signed) GEORGE L. ROOD."

Q. Now then this was Hazard trade, was it not, Mr. Sourwine had displaced with 5,000 kegs of the Phoenix powder? A. No, not the kegs, no sir.

Q. This trade was it, whose was it? A. Well, I should say that that trade belonged to King, a little of it to Equitable, and a good deal of it to du Pont; but I don't think Hazard had a customer on the list you have read.

Q. He was going to Southern Indiana and you haven't any doubt about what he was going down

there to cut in your Hazard trade in that territory at that time, had you? A. That was Rood's statement.

Q. Was not this in that statement? A. He had been advising me.

Q. Wasn't it your own judgment in 1891 that that was what he was going to do? A. These letters we got constantly and I wrote to New York some of the same type trying to get better prices.

Q. Was not it your judgment in 1891 that Sourwine was going to travel in your territory and cut 3068
your prices with Phoenix Powder? A. No, I never feared Sourwine.

Q. You never had any fear of him and yet you sent a copy of this letter to the home office in New York, didn't you? A. That is my duty, to inform my principals and ask for instructions and I got them.

Q. What company had this trade, the Equitable? A. I think the Equitable had part of the trade of the Brazil Block, he mentioned the Brazil Block?

Q. Organized in 1892, the Equitable was, wasn't 3069
it? A. Yes, that is right.

Q. It could not have had it in '91, could it? A. Yes, sir, it was organized in 1892, I thought we were ahead of that.

Q. This is 1891, February. A. Not the Equitable, but the Equitable took a part of the trade of the Brazil Block Company when it came into existence.

Q. That has nothing to do with this passage. A. Prior to that, the trade of the Brazil Block Company had been divided about equally between King and Ohio; Ohio had taken the trade during 1886, prior to 1886 campaign, and held it. McClellan I think was in there, one of those that took part. What were the names of those other people?

Q. Brazil Block, the Nickel Plate and Bryson. A. I never sold them.

Q. It had something to do with the Hazard trade, Mr. Waddell, because you state as follows in that letter: "I presume with all the companies and their representatives in an antagonistic position to each other, there is no means of concentrating defense against any one; however, you may have determined upon some plan and are prepared to instruct me." At that date you thought that this something
3071 that the Hazard might do, it had something to do with you, didn't you? A. I thought they were part of the pool.

Q. It was something that you thought the Hazard might want to take some action about? A. Yes.

Q. It was true at that time, that all the companies and their representatives were in an antagonistic position to each other in February, 1891, were they not, referring to all the pool companies? A. They may have been, I don't know what their conditions were then.

3072 Q. You did know at the time you wrote this letter? A. I must have known something.

Q. That must be true.

Mr. Button: Possibly you had better mark as a separate exhibit the enclosures here from Mr. Rood and also the card.

(Same marked Defendants' Exhibit X and Defendants' Exhibit Y.)

Q. Did you write this letter, Mr. Waddell (handing paper to witness)? A. Yes.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit Z.)

"June 3, 1891.

The Hazard Powder Co.,
63 Pine Street, New York.

Dear Sirs:

In reply to your message, I confirm our t.d. to you reading:

'No. Rosedale reluctant buyer. Advance 'delivery would offend. Indiana trade rest- 3074 'less.'

Considerable urging brought us this order. Indiana consumers all know a better price than $1.48. This trade must be handled carefully or all of it will be lost. We are out now about 10 carloads in Indiana since Jan. 1st.

Truly yours,

R. S. Waddell, Agt."

Q. These ten carloads had been captured by the 3075 Phoenix Company at a cut price, hadn't they, Mr. Waddell? A. I don't know.

Q. Have you any doubt about that matter from that letter? A. I don't know what their price was, evidently our price at that time was $1.48, that sounds familiar to me.

Q. Won't you look at that letter and see whether you can not say your price was considerably more than $1.48? A. Oh, no, I cannot recall about that, specifying a particular price on a particular date so long ago.

Q. There is nothing about that letter which would indicate to you that those were cut prices under your price. What was meant, would you say by the expression "They all knew a better price

than $1.48." Better than your price? A. I presume that $1.48 was our price.

Q. Then they all knew a price better than that, didn't they? A. They may, from some associate.

Q. You would not have written anything to your home company that was not correct at that time, would you?

Q. Mr. Waddell, did you write this letter, dated July 10th, 1891 (handing letter to witness)? A. Yes.

3077 (Letter and enclosures marked A-1, A-2 and A-3 in evidence.)

Mr. Button: I will read the letter (reading): "Cincinnati, July 10, 1891. The Hazard Powder Company, 62 Pine Street, New York. Dear Sirs: Phoenix adds a few more nails to our box, as you will note by Mr. Rood's letter 8th. Presume there is no redress. It is consoling to reflect that 'whom the Lord loveth, He chaseneth,' and that we are the chosen vessels of so much affection, but we hope Lord Kellogg will control his
3078 sentimental inclination and leave us enough trade to pay expenses.

Truly yours,

R. S. Waddell, Agent."

Q. Mr. Kellogg was the man who was at the head of the Phoenix Powder Company, was he not, Mr. Waddell? A. Yes.

Q. Now, at that time, July 10, 1891, you were considerably disturbed lest he would get all of your trade for the Hazard, were you not? A. No, I probably put it a little strong there, a little enthusiastic; I didn't think he could take it all; I knew he couldn't.

Q. In your letter did you enclose those two enclosures? A. There doesn't seem to be any mark indicating that; there is only one enclosure here.

Q. This slip (indicating)? A. No, that is Mr. Colvin's, I think, of New York; the other is a letter from Mr. Rood; I don't know whether I enclosed it or not; it is not marked as an enclosure.

Q. This letter states that "Phoenix adds a few more nails to our box," which you will note by Mr. Rood's letter of the 8th; is not that (indicating) Mr. Rood's letter of the 8th that you refer 3080
to in your letter? A. I presume it is, yes.

Mr. Abbott: If your Honor please, I notice that the letter isn't signed; it seems to be a copy of something; the witness says he cannot recall whether he sent it or not. I haven't any objection to the letter, so far as its contents are concerned, but I don't think that this witness ought to be held responsible for it unless he knows something about it, as having been sent as an enclosure.

3081

Q. This appears to be a copy signed in typewriting, George L. Rood.

Mr. Abbott: Do you contend that that is the original signature of Mr. Rood?

Mr. Button: Why, not at all.

Mr. Abbott: Also let me look at that letter (indicating).

Mr. Button: Mr. Waddell's letter refers to a letter of Mr. Rood's of the 8th, enclosed, and if there is any doubt about it, I would like to have Mr. Waddell read the enclosure.

Mr. Abbott: I think that will be the best way.

Q. Will you not read the enclosure, Mr. Waddell, yourself, and then state whether it is not the letter, a copy of Mr. Rood's letter of the 8th instant that you referred to?

(Witness reads copy of letter.)

A. I think this is the letter—I have not read it through. I constantly forwarded Mr. Rood's letters to the office for their information.

3083 Q. And is not this the original memorandum that Mr. Rood refers to? A. No, I think that memorandum was made in the New York office by Mr. Colvin; it looks like his handwriting.

Mr. Button: This enclosure is dated Terre Haute, Indiana, July 8, 1891 (reading): "Mr. R. S. Waddell, Agent, 45 West Second Street, Cincinnati, Ohio. Dear Sir: I went into Cooper Morris and Company's store this morning and in front of the store stood Mr. Morris and J. D. Souerwine, of Brazil,

3084 Phoenix Powder Company agent. He had about seven bottles of samples of Phoenix Powder Company powder; a small box each of du Pont, Hazard and Laflin and Rand powders. Mr. Morris said 'Good morning' to me, not speaking my name. Souerwine did not recognize me. I stood a moment, when Mr. Morris said, 'Here are powder samples, you are a judge of powder?' I said not much of a judge, and stepped up and began to handle the samples. Souerwine took great pains to show me the powder as well as Hazard and du Pont powders. I said I was better acquainted with Hazard brand than any other; he said, 'yes,' Rood sells, or has been selling, most of the powder in this district, Hazard brand. Then he

pulled out of his pocket a bunch of papers and took out bills for powder as follows (that he has sold and delivered since June 1st): Sherburne Coal Co., Brazil; John Bryson, Brazil; Otter Creek Coal Co., Brazil; Brazil Block Coal Co., Brazil; Nickle Plate Coal Co., Brazil; Zellers & Zigler, Brazil; Jackson Hill Coal Co., Brazil. And he said he had just sold Mr. Rippetoe of Talley's Company a car this morning. Souerwine then commenced to urge Morris 3086
to buy a carload. He said, 'You can buy a car at a dollar forty-five, sixty days, and sell to outside parties in one hundred keg lots at a dollar fifty-eight, and make a good thing out of it.' Souerwine elongated on being du Pont's agent for nine years, and talked not fast enough to suit himself. After he left the store I followed him out in front of the store, and said to him, 'What will you sell Parke County Coal Co. a car of powder?' He said, 'That is Martin's mine, 3087
is it not?' I said, 'Yes, but he is in Europe now.' He said, 'When will they need the powder?' I said, 'In thirty to forty days.' He said, 'Rood sells them Hazard. I wish I could get a car to them, it would do me so much good to beat Rood.' I said, 'Well, what price can you make them a car?' He said, 'I will sell them a carload at a dollar forty-five, sixty days, or 2 per cent. off, $1.45 for cash, 10 days. I said, 'I am going up there this afternoon and would talk to the bookkeeper and I wished he would put the prices down on paper for me.' He wrote in his little memorandum book and tore it out and gave it to me It was, J. D. Souer-

wine, Agent, Phoenix Powder Company, Brazil, Indiana. $1.45, sixty days, $1.42 ten days. He then said, 'If he could get in on them he would shave it to a dollar forty-two, as a dollar forty-five less two per cent. is $1.42 10/100; he would make it even $1.42. He then asked me my name. I said, 'Call me Jones.' He said, 'First name?' I said, 'J. D. Jones.' He said, 'Now, Mr. Jones, if you could only help me in at Rosedale, I
3089 would be so much obliged to you, Mr. Jones.' I excused myself and went into Cooper Morris & Company and in about five minutes he came in and said: 'Mr. Jones, I wonder if it would not be good for me to run up and see them tomorrow, you will be there today, and if I go up tomorrow, it probably would fix it up all right.' I said, 'I thought I could manage them,' and this ended the interview.

The written evidence I will keep until I get to see you as I do not want it to get
3090 out of our possession. The exact copy reads as follows, in Souerwine's own handwriting:

J. D. Souerwine, Agent, Brazil, Indiana, Phoenix Powder Co. $1.45, 60 days; $1.42, cash 10 days.

This is only what I have been certain of for many days and it is a serious question, and we can either come to the front or lose all our trade that has cost me nine years' hard work to get and maintain, even the thought of it makes me sick. Very respectfully." Signed in typewriting "Geo. L. Rood." Post Script. 'Wire me, Marshall, Ill., by 10 A. M. Thursday, or Greenup, by 3 P. M. if you desire anything further. I have decided to enclose the memorandum.

G. L. R."

Q. Now, don't you think that is the original Souerwine memorandum in view of that? A. It may be; I don't know whose it is; it is not mine.

Q. Now, then, at that time this price that was being made according to this correspondence was considerably under the Hazard price, was it not, Mr. Waddell? A. I should judge the Hazard price was $1.48.

Q. Well, you have no doubt but what that was a Phoenix cut, have you? A. Oh, the Phoenix Powder Company may not have had anything to 3092
do with it at all; it may have been a division of commissions.

Q. You have no doubt that it was a cut by Mr. Souerwine on Phoenix Powder, have you? A. He may have divided his commissions; ten per cent. commissions they usually got.

Q. Did you write this letter, July 27, 1902, to the du Pont Powder Company, or rather the E. I. du Pont de Nemours and Company (handing paper to witness)? A. Yes, sir.

Q. I ask you if, by that time, then, July, 1902, 3093
you had taken on the business of the du Pont Company in Cincinnati? A. I think it was about the time

Mr. Button (reading): "E. I. du Pont de Nemours and Company, Wilmington, Delaware, July 27, 1892. Dear Sirs: We are making some progress investigating the Illinois district. In regard to Duquoin, I asked Mr. Rood to report on the trade if he found it influenced or was associated with other markets, but to refer buyers to Mr. Meacham.

I append some of Mr. Rood's reports which throw light on the situation.

From Tamaron, Ill., July 25, D. C. Bar-

ber & Son have a mine, work about 20 to 25 men, do not ship much coal and are quite slow business men, but are good financially. Have been using Miami powder, did at one time use Kings, but they sent them a poor lot of powder and they had to return it to them, and about four years ago they bought Miami until last week, July 22, they bought of French (King's agent) 400 kegs powder guaranteed in price and quality, and Mr.
3095 Barber would not give me the price he paid, but inferred it was less than $1.30. He also said that French said he had sold Horn at Duquoin, Ill., a large buyer and coal dealer at Duquoin. I will see Horn and see what I can find out from him.

Duquoin, Ill., July 25, 1892.

Mr. Horn said he did not buy of French as French had said to Barber at Tamaron. Said he had du Pont Powder and used 250
3096 to 300 kegs per month. That he could buy powder at $1.25 per keg, of several companies and mentioned Phoenix Company as one, but he said he was satisfied, and Meacham cannot be beaten.

St. John, July 25, 1892.

I. C. C. & Salt Co., Haliday Mine. They bought of Laflin and Rand Co. before the decline at in the neighborhood of $1.40, and after had it scaled to $1.30, have a quantity to last them until Dec. 1, 1892, and will write us before purchasing.

J. M. Browning has a mine here and has associated with him C. McKinley, who op-

erates a mine at Wilderman and one at Renschler, at Duquoin, they have been buying powder of du Pont for several years, through Meacham, St. Louis. J. M. Browning, Duquoin Coal & Mining Co., consume about 400 kegs per month.

They sell Egyptian Mine 75 kegs per month; Excelsior Mine, 125 kegs per month; Superior Mine, 50 kegs per month; Greenwood Mine, 75 kegs per month, and have no trouble so far in holding at 4 or 5 cents 3098
per keg profit and are willing to continue to sell them at small profit. They did sell Enterprise Coal Co., Mr. Wall, Jr., is superintendent and manager of the Enterprise Company and is a nephew to Mr. Nettleton, who is bookkeeper for the Duquoin Coal Company and stand together. Enterprise Co. continued to buy of Duquoin Co. until a few days ago. Chattanooga Powder Co. came and fixed up what they call an agency. Selling them a carload at $1.30 per 3099
keg, delivered at Duquoin, giving them ten cents per keg. Commission, also a written guarantee guaranteeing them against decline. Enterprise Coal Co. to receive the powder, sell it, and pay at $1.20 per keg each month as their consumption may be, some 4 to 5 months on a carload, and in the event of the powder is poor and does not satisfy the miners, Enterprise Coal Co. are to ship it back and pay for what they have sold or consumed. This takes one of du Pont's customers.

Joe French called at Duquoin Coal Co. office on last Friday and made them, Mr. Nettleton, the bookkeeper, a price for a car

3100 at $1.22 and ½ per keg delivered at Duquoin. They knew of the Chattanooga price and tendered him an offer of $1.20 for a car, saying they had to have a carload of 1,000 kegs by Aug. 10. The reason why they tendered him the $1.20 was that they could not get it of du Pont (Meacham) and they were compelled to get $1.20 powder to hold other mines that they now supply. I said to them that I did not have any instructions to treat
3101 with them, but I would write the situation fully and the company could do as they saw fit. French did not accept at $1.20, but said he would take the order at $1.22½, 60 days time, which means $1.25 less 2 per cent., and they wait 60 days for their pay; finally French said he would take in the order at $1.20 and would let them accept it or not and they are to wire Duquoin Coal Co. by Tuesday. I have succeeded in getting them to wait this week and not place an order until we have a chance at them, either through
3102 Meecham or us at Cinti., Ohio.

Jupiter Coal Co. French went to them, they want powder in 60 days and to get the order he said that probably the price would take it at $1.30 and give him a guarantee to make it any price that was quoted him and succeeded in getting the order by so doing. Both S. B. Eaton and French knowing that Chattanooga had a price out at $1.20. If this is not accepting orders at a $1.20 in every sense of the word, I do not know much about business. I will go to Muddy Valley and Carbondale tomorrow afternoon and come back here in the evening.

3103

George Nye is traveling for Phoenix Powder Company and was in this section last week. Rood. Truly yours, R. S. Waddell, Agent."

Q. Now, then, Mr. Waddell, in July, 1892, the King Company got down to $1.20 for blasting powder, had it not? A. Yes, they see-sawed down, all of them, first one and then the other.

Q. And the Chattanooga Powder Company had gotten down to $1.20 in Illinois, had it not? A. 3104
It seems so from that letter.

Q. Therefore, you were mistaken this morning in saying that the Chattanooga territory did not extend as far north as Illinois, were you not? A. That is the extreme lower point of Illinois; I didn't remember that they ever had a customer in the state.

Q. As a matter of fact, they did get into the state? A. They appeared to have a customer there.

Q. Now, that was down to $1.20 from what point? It had been $1.48 previously? A. $1.48, yes. 3105

Q. Now, that price had not been pounded down there by the Hazard or the du Pont Company, had it by those two, Mr. Waddell? A. Well, they took their part in it in different sections; you are just reading letters at intervals; you don't read the whole correspondence.

Q. I can read only one letter at a time. A. Take the whole file and we will find——

Q. How about this one of July 27, 1902 (handing paper to witness)? A. Yes, that is my signature.

Mr. Button (reading): "Cincinnati, July 27, 1892, du Pont Company. Dear Sirs: We have wired you two messages this date reading:

1st. 'French of Kings offered Duquoin Coal Co. last Friday, at $1.22½ and said Peters would write meeting Chattanooga $1.20. Duquoin Co. promised to wait your advices. We suggest you instruct Meacham or us to sell them quickly at $1.20.

2nd. 'We can sell Centralia Mining Co. car at one twenty if desired. Kings took them from you May twenty-third.'

Mr. Rood's letter reporting from Duquoin
3107 the work of French of King Powder Co. enclosed you today fully explains No. 1.

The Centralia M. & Mfg. Co. were your agents and I wrote you of Kings having taken them at $1.39 2/10. Mr. Rood wrote they would take a car at $1.20 and feeling the competition was not strong and that Mr. Rood was using our Kentucky price as one that might probably be made in Illinois. I asked him to return to Centralia and try to do better. His later reports of the acts of Kings and Chattanooga impressed me with
3108 the necessity of submitting the question to you as I have done in T/D No. 2. When all the correspondence. When all of the correspondence is assembled, I trust that this will be clear. Truly yours, R. S. Waddell, Agent."

Q. Now, in sending those telegrams you were asking permission merely to meet these prices that had been reported to you that were made by other companies, were you not, Mr. Waddell, to your customers? A. Just what it states in the letter; I don't recollect.

Q. Well, that is the effect of it; Kings had taken one of your customers and the Chattanooga an-

other and you had put the situation up to the du Ponts with a request for permission to meet the price, isn't that what it amounts to? A. But it states there Rood was using our $1.20 price against the $1.39 over there; I don't understand that part of it.

Q. Is this your letter dated July 20, 1892 (handing paper to witness)? A. Yes, that is my signature.

(Letter marked A-6 in evidence.)

Mr. Button: 3110

"Cincinnati, O., July 20, 1892.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Taylor Coal Co., very good customers of ours for two or three years and with mines located near McHenry, have been quoted by Chattanooga Co., the same prices given Mr. 3111
Henry, with an offer of two years contract. We can close with them for 3,200 kegs to be taken within one year, on the same terms. Please wire on receipt of this if it meets your approval. Closing with Taylor Coal Co., would shut Chattanooga out of the bulk of trade in southwestern Kentucky.

Truly yours,

R. S. Waddell, Agt."

Q. Now that shows you, doesn't it, Mr. Waddell, that the Chattanooga Company had cut under the price that you had had with the McHenry Coal Com-

pany previously, for two or three years? A. I should think so.

Q. And that you were asking permission to make a contract with them at the same prices? A. To meet the Chattanooga, yes.

Q. And it shows that you were making contracts for the delivery of powder for this date, doesn't it? A. No.

Q. Or wanting to? A. It don't show that we were making them; it shows they are submitting
3113 the same proposition the Chattanooga had submitted.

Q. Here is another letter of the same date, is that your signature (handing paper to witness)? A. Is it dated Cincinnati?

Q. Yes. A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-7.)

Mr. Button: This is a letter to the du Pont Company under date of July 20, 1892:

3114 "Dear Sirs: I have had three or four conferences with the Mermet Company regarding another car of powder. They asked our price and I quoted $1.30. Mr. Trum B. P., stated this was too high and requested that we name better figures. I called to see him again and told him that $1.30 was the best price we would quote, and I did not believe any powder company would offer for less. He told me I was mistaken, that he had better offers and would buy if we do not do as well. He further stated that he was guaranteed protection against any decline in price and the offer of the lower figure coupled with this guarantee was sufficient to command his trade. I tried very hard to

learn what the price was. He is a shrewd buyer and would not give me the slightest hint, but said he would give us $1.15 for three cars. I told him that was entirely too low a figure and I did not think it would be considered. They prefer du Pont powder. I do not believe they can buy any brand at the price named.

Herewith is a letter from them of this date which speaks for itself. They ask a reply not later than Monday and would like 3116
it earlier if we can give it. The protection clause is objectionable and I suggest that this might be met by delivering in four hundred keg lots, provided a satisfactory price can be agreed upon. The price might then be guaranteed up to the date of shipment and their risk would not be great on half car loads. I told Mr. Trum that I didn't think any powder had been sold in Kanawha below list $1.30 2 per cent off. He told me he knew of several sales below this 3117
price.

Truly yours,
R. S. Waddell, Agt."

Q. Do you recall where the Marmet Company was? A. Yes, it was about fifteen miles below Charleston on Kanawha River.

Q. In West Virginia? A. Yes, sir.

Q. Do you know of what company it was that was giving that price, cutting under prices there? A. No.

Q. At this time you were convinced that some concern had, were not you? A. I should say it was the Phoenix, but I don't know. I know that the letter stated that the price was $1.15, but I do not believe I had any such figure.

3118 *R. S. Waddell—Cross*

Q. You were well convinced at that time that he had a lower figure than the $1.30 which you quoted, were you not? A. You cannot always depend upon the buyers to tell you the truth.

Q. Well right there then, that is pretty difficult then to find out what your competitors are doing, isn't it, Mr. Waddell? A. Yes, sir.

Q. And it is very possible that the concern might cut the price of a competitor without really intending to do so simply from the lack of facili-
3119 ties of finding out a competitive price, is not that true? A. That is true where they did not understand each others prices.

Q. Now will you state whether that is your letter with the enclosures in it (handing letters to witness)? A. There are three letters here.

Q. Three right here? A. Three of mine.

Q. There is another one, is not that also one that was enclosed? A. It don't appear to be signed; I don't know what it is.

Q. I call your attention to that letter (indicat-
3120 ing)? A. It seems to be from a letter book.

Mr. Button: Here are three letters of Mr. Waddell's (handing same to counsel).

Please mark these.

(Same received in evidence and marked Defendant's Exhibits 8, 9, 10, 11 and 12 respectively.)

Q. Is this your signature (handing witness paper)? A. That is my signature.

Q. I see that I have two or three of a previous date, and I will refer to them first, and while you are looking at them I will read this one which is dated July 11, 1892.

Mr. Waddell, of the du Pont Company, Exhibit A-8:

Dear Sirs: We received orders from St. Bernard Coal Co., Erlington, Kentucky, for four carloads du Pont powder, one car Hazard to be shipped August 1st, October 1st, December 1st, January 1st and February 1st. Price $1.30, to be guaranteed up to date of shipment. In the event of change of price the superintendent of St. Bernard is to notify us naming parties who offer better price 3122 and show us bona fide quotations at less. It would then be optional with us whether to ship or cancel order. I did not have time to submit the delayed orders to you before receiving a letter from St. Bernard Coal Company of which enclosed is a copy. Have wired Mr. J. R. Rash, Superintendent of Sycamore, that Mr. Rood would see him Wednesday morning. I am quite anxious to corner this trade for the pay is good and it is a first class market for Chattanooga P. 3123 Company product via Nashville, while we can get it from Moor, Iowa. Please wire me, or if you can reach us by letter Wednesday, instruct whether the long time orders meet your approval. With the option clause, the time cuts no figure unless prices go above $1.30, and it might suit you in that event to have the trade secured. We have the inside on the deal and will hold or release it as you desire.

Truly yours,

R. S. Waddell, Agt."

3124 That was enclosing a letter from Mr. Rash to the Hazard Powder Company, at Erlington, Kentucky:

"July 9, 1892.

Dear Sirs:

I am quite confident now that I will be able to make a much more satisfactory powder arrangement than you offer. On consequence of which it will be useless to further con-
3125 sider our proposed deal. I am able to make contracts for a year at $1.25 per keg, but I want to make it two years at least and maybe three years.

(Signed) Your friends,

Jas. R. Rash."

Q. Now, Mr. Waddell, you sold him some powder, had taken an order for $1.30, quite a number of shipments of Hazard Powder, hadn't you,
3126 and then lost that on a quotation from Chattanooga at $1.25? A. Conditional order.

Q. That was in July, 1892, and then you come on with this correspondence of July 13, 1892, one of your letters to the du Pont Company:

"Dear Sirs:

I received a letter from W. G. Duncan, Superintendent McHenry Coal Company, McHenry Kentucky. Copy enclosed. Mr. Rood was en route to Erlington on the St. Bernard Coal Company field, and I stopped him at McHenry. This morning I had his wire reading: 'Chattanooga quotes $1.25 less 2. Wire Erlington what to do with Mc-

Henry Co.' I submitted the question to the Hazard Powder Company and just have their reply reading: 'McHenry Coal Co., proposition declined. This trade is quite important. Their mines are about three miles from Central City (T. C. du Pont), and we have sold them about all the powder they have used for three years. Mr. Duncan is a fast friend of ours, reliable in his statements and will not ask more than he is offered by others. I do not attach much importance 3128
to his desire for the written contract for two years. What concerns us most now is to place a carload. If you will accept the order at the price named, I think I can arrange for him to take du Pont powder and will hold Mr. Rood at Erlington until we have your wire tomorrow.

Truly yours,

R. S. Waddell, Agt."

And the enclosures from Mr. Duncan seems to be dated July 11, 1892. "R. S. 3129
Waddell, Agent, Cincinnati, Ohio.

Dear Sir:

Please quote us a price on one car load of FF Hazard powder for immediate delivery. Can there be an arrangement made with your company to have a written contract for powder at a price for two years? Please answer this by return mail, giving me a price on a carload right away, and letting me know whether or not a contract could be made for two years and at what price.

Yours very truly,

W. G. Duncan, Superintendent."

3130 Now, then, on this business, the Chattanooga had cut under your price, you had wired to Hazard Powder Company asking if they would make the same price and they had declined, is not that true, Mr. Waddell? A. Yes, the freights were very heavy in there.

Q. In July, 1892, the price had not yet come where they were meeting the prices or cutting them to shut out the Chattanooga and keep all of their trade, had it, Mr. Waddell? A. Yes, you are only
3131 reading our complaints of the others; you are not reading the others complaining of us, other companies. This is one sided, every other powder company was making complaints too.

Q. Complaints were made to whom, whom do you mean? A. Agents of the other companies, the Hazard Powder Company, the du Pont Powder Company.

Q. They were making complaints too? A. Making complaints of other companies to the Hazard and du Pont.

Q. You were getting them too? A. Yes, sir.
3132 Q. From other companies? A. Yes, sir.

Q. The last letter of July 14, 1892, written to the du Pont Company is as follows:

"Dear Sirs:

Supplementing what we wrote you yesterday regarding the McHenry Coal Company, I wired this morning message reading 'Vannen Coleman writes confirming McHenry mention, our mail 13th. Chattanooga makes offer and solicits two years' contract. Price to McHenry and St. Bernard $1.25 less two. We hold option.' Now confirmed. The price Mr. Rood obtained from Duncan, Superin-

tendent McHenry, and Rash, Superintendent St. Bernard. Herewith I hand you copy Mr. Colemans' letter 13th in full mention of Mr. Duncans' visit at his office. This information tallies with Mr. Rood's report. I have a T from Rood reading: 'Rash is quoted $1.25 less two per cent. cash. He wants 11,000 kegs for the year, based on present consumption. But in case the consumption should not demand it so fast wants cars held until they need it. No other powder to be 3134
used during this contract.' My impression is, this is about 3,000 kegs more than they can use at Erlington and St. Charles. The purpose being to delay shipments and bridge over into a second year. I have wired Mr. Rood: 'Close contract, price named, for definite quantity. All to be taken within a year. Will accommodate shipments to consignees' wants, delaying or hastening as notified. Do not extend indefinitely into future. Except advices for McHenry tonight.' This gives
you full information of the situation in Ken- 3135
tucky. I hope to close the St. Bernard deal and have your instructions regarding McHenry, so that that case may be closed tonight. Our only competitor at McHenry is the Chattanooga Powder Company. But the Phoenix are involved at St. Bernard. They appear to be working in harmony with the Chattanooga people. Am sorry to annoy you so much with the details of our trade, but it seems best that we give you the fullest mention, while continually asking instructions.

Truly yours,

R. S. Waddell, Agt."

Q. That showed that you hadn't any general instructions at that time to meet any prices to keep out the Phoenix and Chattanooga, doesn't it, Mr. Waddell? A. I never had any general instructions at that stage of the game, no.

Mr. Button: Now for a moment going back to July 18, 1891, just a minute, I find a letter to the Hazard Powder Company or an agreement as follows:

3137 "If you understood the complex ownership of Indiana mines as I do our fears for that trade would be appreciated. To particularly illustrate:

Otter Creek, C. Co., Dan Corkery Zimmerman et al. buy Phoenix brand at $1.45 less 2 per cent. on time.

Jackson Hill C. & C. Company, 125 kegs per month. D. Corkery, Harder, Fairbanks, Mackey et al. order for Hazard given by Harder countermanded by Corkery. Buy Phoenix brand at $1.45 less 2 per cent. on

3138 time.

Diamond Block C. Company, 100 kegs per month. Harder, Hafer, Lancaster Block Co. et al. Andrews of Lancaster Co. ordered last car. Harder or Corkery will buy hereafter.

Lancaster Block C. Co., 15 kegs per month. Andrews et al. Have been notified by Diamond Block people of $1.41 price.

Brazil Block C. Co., 1,000 kegs per month. Gilman, Corkery et al. Buying Phoenix at $1.41. This Co. is confidentially negotiating to buy Parke Coal Co.

Parties who are interested in above mines also own stock in Coal Bluff. J. Smith

Talley, Indiana Block, Nickle Plate and other mines. It takes 85 per cent. of our Indiana trade and the 'cream' financially. Once out, always out. I believe you understand we are on the ragged edge expecting to exit.

Truly yours,

R. S. Waddell, Agt."

3140 Q. Now that was in July, 1891, and you had lost practically all that trade in Indiana to the Phoenix Powder Company, hadn't you, for the Hazard? A. No, we held it, we held Indiana trade, I got the instructions to hold it and we held it.

Q. When? A. After that letter, after that letter or correspondence I held the trade, and when the Phoenix went out I had the business.

Q. That is the letter shows that at this time you lost it to the Phoenix, at cut prices? A. Maybe at the time, at the moment.

Q. At this time? A. Month to month.

3141 Q. And the price then was $1.40 and $1.45 as made by the Phoenix, and as we have just seen in these letters a year later; and in the meantime they cut it down to $1.20 from $1.45? A. Went down to eighty cents before it ultimately fell into our hands; we had it at eighty cents.

Q. And gained it again only after this length of time, having lost it at the time, and this letter states the truth, the facts as they existed on July 10, 1891? A. Yes, at that date.

Mr. Button: Better mark this one that I just read.

(Same received in evidence and marked Defendant's Exhibit A-13.)

Q. This is another one, Mr. Waddell (handing to witness). A. Yes, that is my signature.

Mr. Button: This is the 18th of July, 1891, to the Hazard Company.

"Dear Sirs:

Morris Sternberger just called—inquired if his car had been shipped. I told him it left the mills 15th inst. He told me he had purchased fifty kegs of Phoenix for $1.58 on
3143 trial—if it was found passably good for miners, he had bought the last car of Hazard unless they made him a $1.42 price net. Will be ready to order in two weeks. I told him there was more than ten cents a keg difference in the powder. He replied: 'Possibly to a consumer, but Phoenix will sell for as much as Hazard to a miner, and afford me more profit.' I wonder where this inroad upon our trade is to end and what there will be left to us. They seem to select only the best customers and leave us the
3144 doubtful trade.

Truly yours,

R. S. Waddell, Agt."

Mark this.

(Same received in evidence and marked Defendant's Exhibit A-14.)

Q. It was not quite correct, as you stated this morning, Mr. Waddell, that as soon as one of these companies made a cut price the du Pont and Hazard met that price and went lower and kept the customer? Do you recollect making that statement this morning? A. Yes, we went down with it, we went with Sternberger to seventy-five cents and held his business when we quit.

Q. But in the course of the next four or five years, wasn't it? A. When the fight ended July 4, 1896.

Q. But up to this date you hadn't met that price with Sternberger, had you? A. No, they came down slowly, alternating, first one would cut and then the other.

Q. Letter of July 20, 1891. Is that your letter (handing leter to witness)? A. Yes, that is my signature.

Mr. Abbott: If they are all similar I don't 3146
care to read them over. Hadn't you better have this one marked?

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-15.)

"Hazard Powder Company,
63 Pine Street,
New York.

Dear Sirs: 3147

Yours 17th inst. received.

No, my letter 15th was correct. The order is not cancelled nor confirmed. Mr. J. Smith Tally, President, called at our Cincinnati office Saturday and we discussed the matter at length. He is exceedingly friendly and I tried very hard to convince him that Hazard Powder was cheaper for him at $1.48 less 2 per cent. than Phoenix at $1.42—how well I succeeded the next ten days will decide, 'it is uphill work defending against Phoenix with their advantage in price.'

Truly yours,
R. S. Waddell, Agt."

3148

Q. At that time the Phoenix was consistently below your price, wasn't it? A. At that day they were below us.

Q. The next one comes down to September, 1891. Is that your letter to the Hazard Company (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark this.

(Same is received in evidence and marked Defendant's Exhibit A-16.)

3149

"September 14, 1891.

To the Hazard Powder Company.

Dear Sirs:

We have yours 11th inst., order No. 54 for Coal Bluff Mining Co., Coal Bluff, Indiana, might as well be cancelled as I do not think it can be revived. The Coal Bluff Company bought two car loads from Phoenix

3150

at $1.45 less 2 per cent. We have dallied along with these people in the hope that something might transpire to retain that trade, but it might as well be abandoned permanently.

Truly yours,

R. S. Waddell, Agt."

Q. The next one is October 1, 1891, being a letter you sent to Mr. Weightman (handing witness paper). A. George Weightman. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-17.)

"George Weightman, Esq., Treas.,

Care W. McBlair & Co.,
507 N. Third St., St. Louis, Mo.

Dear Sir:

Since receipt of yours 23rd ult., regarding sale by Mr. Rice through Mr. Madden to Coal Bluff, Mr. Rood ascertained when he called upon Mr. Talley that no mention whatever had been made to Mr. Madden nor in his presence to any other person, of Hazard powder. The reference to a $1.40 price was made by one of the gentlemen in the 3152
office, I think, a Mr. Ripeto, but it applied to Phoenix powder. Mr. Madden, of his own volition, stated that it was Hazard, for the purpose of influencing Mr. Rice to authorize a sale, and Mr. Talley says that Madden took the order at $1.40 and if so disposed he could have held him to a delivery. However, the order was cancelled as Mr. Talley at once purchased a carload of Phoenix Powder. All this is reported to the writer by Mr. Rood, and is given as such without 3153
endorsement or comment. We certainly have not sold or solicited orders at $1.40 and I am not altogether sure that any one else has done so, except in the instance related to Mr. Madden.

Truly yours,

R. S. Waddell, Agt."

Q. You lost that customer, didn't you, Mr. Waddell? A. No, sir, that is the best trade we had when we quit.

Q. You lost it at that time? A. Yes, we did, yes.

Q. Is this yours with the enclosure (handing paper to witness)? A. This is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-18.)

Mr. Button: "October 8, 1891.

The Hazard Powder Company,
63 Pine Street,
New York.

Dear Sirs:

Yours 1st inst. received.

The fellow who did not have the boots when they were wanted, is said to have accumulated a large stock later on, and was at last accounts behind the door trying to kick himself for not keeping up with the demands of a country that gets larger every year.

I wanted to sell 150,000 this year and feel a little disappointed.

If it is the policy to let Phoenix market her output and all others hold to list, we submit—but others are going in for trade that would be ours at equal price. Your statement of carloads to me is misleading—about five orders were cancelled and several others are used to replenish stocks.

When I receive letters like the enclosed, and Mr. Rood writes they showed him a letter from Souerwine, naming $1.45 four months or $1.40 cash I get desperate, raise the safety valve and write principals.

Truly yours,
R. S. Waddell, Agt."

The letter enclosed was from Bugger, Neal & Co., to the Hazard Powder Company, October 3, 1891:

"Gentlemen:

We are not looking for cheap powder or low prices either, but we understand powder is down and we want you to let us have it as reasonable as you can. Thanking you for past endurance (?)

We are, Yours truly, 3158

Bugger, Neal & Co."

Q. Now at that time, that day they had not only cut your price but you were confident you could hold your trade if they would only allow you to make equal price in Hazard, weren't you, Mr. Waddell? A. I don't know whether I was confident or not.

Q. You said so. A. I was willing to try it, I was not a cutter.

Q. You say here "but others are going in for 3159 trade that would be ours at equal price." A. That indicated that other members of the association were getting business, we also held that trade but only at the end of the pool.

Q. This does not indicate that any of the associates was getting business, it indicates that the Phoenix Powder Company was getting business, doesn't it: "If it is the policy to let Phoenix market her output and all others hold to list," that would indicate they were the ones that were cutting just then? A. In that clause of the letter; the other, I inferred from the way you read it were our associates that were in on it.

Q. Is this the letter which you wrote in your own

3160 *R. S. Waddell—Cross*

hand December 1, 1891 (handing letter to witness)? A. That is my handwriting, yes.

Q. Inclosing a quotation or letter from some one else? A. Yes.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-19-20, 21 and 22.)

"December 1, 1891. To the Hazard Com-
3161 pany.

"Herewith please find quotation by Chiles & Cronin, of Chicago, to David Engle, namely, 800 kegs at $1.42, and 400 kegs at $1.46 for powder, 'second' to none. Phoenix capacity 1,600 per day; McAbee new mill capacity 800 per day; Chattanooga new mill capacity 1,000 per day, total 3,400 per day.

This is the quantity that must be marketed and a good part of it will be unloaded in our territory. We have lost St. Bernard Coal Company to Phoenix. I tried to hold
3162 them for Sycamore but failed. They are good consumers. Correspondence like C. & C. fixes a price and we must decline Engle's order now on our files this office. He asked us to hold the order until the strike should be abandoned, or that it should not be known it would not include his miners.

I presume there is no relief, but it does seem essential that the associated companies should agree upon some channel through which the prices could be driven down to a living point without general and promiscuous cutting.

Why not pool a few carloads in the hands of discrete men and let the trade of the com-

panies that need protection be referred to them.

It would be a light loss on each associate and force the independent companies to capitulate.

Truly yours,
R. S. Waddell, Agt."

Q. Did you ever know of them, in that period, in the early nineties, to adopt your suggestion and pool some powder and sell it out to meet that 3164
competition, Mr. Waddell? A. No, that simply—the placing of an agency that meant that would control it that would have sense enough not to demoralize the market.

Q. However, the suggestion was not carried out? A. Oh, no, sir, no; they had a pool different from that.

Q. This shows that the St. Bernard Coal Company concerning whom we have already read some correspondence you had lost before this time? A. Yes, at that time; I held them when the fight was 3165
over.

Q. You had it when you quit? A. I did.

Q. Here is another letter in your handwriting, is it not, and telegram that you sent or received, I don't know which (handing witness papers). A. Sent by my office, probably, that is my signature to the letter.

Mr. Button: Mark it please.

(Same received in evidence and marked Defendant's Exhibits A-23 and 24.)

This is dated December 7, 1891.

"Dear Sirs:

The enclosed T/d tells the whole story except it does not mention how much they paid to accomplish the work.

I presume the shortest and easiest way is for us to throw up our hands and gracefully admit defeat.

If you could understand the situation and I could rely on support at headquarters it would not be so easily won without struggle. Still it would be an ultimate loss.

Cancel the order. I think this lets Hazard out of the State of Indiana, excepting a little sporting through Van Camp H. & I.
3167 Co., and that will not survive the $5.00 price at which Cincinnati Grocers are selling Austin Powder throughout Southern Indiana and Illinois.

Truly yours,

R. S. Waddell, Agt."

Q. Therefore, in December, 1891, the Phoenix Company after having been operating for something less than a year had run the Hazard Powder Company entirely out of the State of Indiana,
3168 hadn't it, Mr. Waddell? A. No, not the Phoenix, they were all in it, all the powder companies.

Q. Somebody had done it, hadn't they? A. Well, yes, at the time of that information, from one of the associated companies in New York, we were down one month and up the next.

Q. I dare say, yes. This vicious contest had not yet begun? A. Yes, it was in full operation.

Q. With the Chattanooga and Phoenix as the victims? A. That is the start of it, well they were started.

Q. Then they started it by the Hazard being put out of the State of Indiana, did they? A. On that date.

Q. On that date? A. But they were in it at the end.

Q. That is, in December, 1891; but did you write this letter in March, 1892, telling what trade you had lost and to whom (handing paper to witness)? A. Yes, that is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-25.)

This is dated March 18, 1892, to the Hazard Company:

"Herewith I hand you memo of car load customers held by us until December, 1890, all of whom were taken from us by cuts in price, or by combinations and business advantages that made gain for the buyer in quitting us. I also append a list of new carload customers acquired by us during 1891. 3170

I estimate net loss in carloads to the Hazard Company per year 46,000 kegs.

Carload Customers Lost.

Name of Customers.	To Whom Lost.
Globe Iron Co.	Kings
Sternberger Bros.	Ohio & Kings
Means, Kyle & Co.	Phoenix
E. B. Willard & Co.	"
Winifrede Coal Co.	Kings
Stevens Coal Co.	"
M. T. Davis	"
St. Clair Coal Co.	"
Rush Run Coal Co.	Oriental
Beechwood C. & C. Co.	"
Central Coal & Iron Co.	du Pont
Jackson Hill C. & C. Co.	Phoenix
Brazil Block Coal Co.	L. & R.
Pittsburgh C. & C. Co.	supposed Phoenix
Diamond Block Co.	Phoenix

3171

3172 *R. S. Waddell—Cross*

Sandy Creek C. Co.	Miami
David David	Ohio
Viele Stockwell & Co.	du Ponts

Carload Customers Gained.

Name of Customer.	From Whom.
R. McJohnston & Co.	Oriental
W. A. Murdock	Kings

3173 Truly yours,

R. S. Waddell, Agt."

Q. Now, then, Kings and Ohio and Miami and du Ponts who had gotten your trade here and Laflin & Rand with Senior of the Fundamental Agreement which you have testified to in 1889 were members of this Association, were they not? A. Yes, and their agents received instructions to cut the price before I got it. We were see-sawing all the while.

3174 Q. In other words, they were competing with you? A. Well, they got their instructions first and got on the ground first and got the order.

Q. We read some little while ago about the Sternberger trade in July, 1892. Are those your letters (handing witness papers)? A. Yes, they appear to be my signature on the first one.

Mr. Button: Mark them.

(Same were received in evidence and marked Defendant's Exhibits A-26, 27 and 28.)

"July 28, 1892.

"On receipt of yours about Sternberger Brothers, I wrote them the 25th inst., copy enclosed with their reply.

Please note Sternberger states he was offered at $1.20 last week.

Truly yours,

R. S. Waddell, Agt."

This was through the du Pont Company and your letter to Mr. Sternberger a copy of which was enclosed is:

3176

"Cincinnati, Ohio, July 25, 1892.

Messrs. Sternberger Bros.,
Jackson, Ohio.

Dear Sirs:

Yours 22nd inst. delaying shipment car powder to you is received and noted.

I am just in receipt of a letter from Messrs. du Ponts and also from Hazard in reply to our letter proposing to furnish 3177 them orders for two cars powder to you $1.30, price guaranteed. The du Pont Company say they will book an order at $1.30 per keg, price guaranteed against offers made by others, provided it is left optional with them whether or not to accept quotations made by others up to the date of shipment. This would leave you free to buy at any price quoted you. The du Pont Company would guarantee against their own general acts. The Hazard Company say they are willing to book you an order at $1.30 and guarantee the price against their own acts to the trade in your locality, but neither of the companies will bind them-

selves to guarantee against any price that might be named a dealer for the purpose of forcing them down, when the party making theoffer knew the dealer had purchased and understood his price would not be accepted.

I take it, either, and both of these companies want to sell you at as low prices as are ruling in the Jackson market, only they do not want to get into a controversy with a valuable customer over a price not under-

3179 stood at the time of shipment.

When the shipping date arrives, please wire me the figure at which you are willing to take a car of Hazard powder based on offers you have from others, and give me six or eight hours to put it through. This, I think you will find entirely satisfactory.

Yours truly,

R. S. Waddell, Agt."

3180 And their letter to you:

"Your favor of the 25th inst. is at hand. Replying to same will say that your proposition is satisfactory, although it leaves us in doubt as to where we will buy our powder. I have been offered powder in the last week at ten cents per keg less than the price made by you, and I think others are buying as low if not lower. Will wire you as requested.

Very truly,

Sternberger Brothers."

Q. That was the general situation of prices and

the lowering of prices, wasn't it? A. On that date.

Q. This is July 28, 1892. The next is August 5, 1892. Is this a letter of yours (handing witness paper)? A. Yes, sir, that is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-29.)

To the du Pont Company:

3182

"We wire you messages today reading:

'First: May we sell Johnson Mining, Brazil, Indiana, 1,000 kegs blasting, $1.20, Souerwein, Phoenix price.'

'Second: We can sell Zimmerman, Brazil, car at Johnson's offer, now using Phoenix.'

'Third: Dayton Coal Co. are offered $1.12½ at Dayton, Tennessee by Chattanooga Company. They tender us order 400 kegs same price.'

Now confirmed. In reply to which we have your telegrams reading: 3183

First: 'Sell Zimmerman, Brazil, car blasting at $1.20.'

Second: 'Do not sell Johnson Mining Co., Brazil.'

Third: 'We accept 400 kegs Dayton Coal Co. at 12 and half.'

We enclose you order Dayton Coal & Iron Co., and will advise you later as to Zimmerman.

Truly yours,

R. S. Waddell, Agt."

Q. Your experience of 1892 was that you had to bid against the Phoenix and Chattanooga so to meet their prices which they had made, wasn't

it, Mr. Waddell? A. All these particular customers they were very loyal friends of ours.

Q. They were not so loyal but what the Phoenix and Chattanooga had gotten away from you a while? A. No, sir, I think we held the trade of the Dayton Coal & Iron Company.

Q. On August 20, 1892, is this your letter (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark it.

3185 (Same received in evidence and marked Defendant's Exhibit A-3.)

To the Hazard Company:

"The Phoenix Huntingdon mills are selling blasting at Jackson, Ironton and on Kanawha River at $1.10 per keg. We know of three carloads that have gone in at this figure.

I have orders for Sternberger Brothers, 800 kegs, delivered September 10th; Globe
3186 Iron Co., 800 kegs, delivered September 20th; Means Kyle Co., Hanging Rock, Ohio, 1,000 kegs, all at $1.10 per keg. F. E. Hayward & Co., Ironton, Ohio, 800 kegs at $1.15 per keg. These orders are taken subject to your approval.

Please advise if you want the orders.

Truly yours,

R. S. Waddell, Agt."

Q. So the Phoenix Company in West Virginia had gotten the price down to $1.10 in August, 1892, hadn't they? A. I don't know who got it down they were selling it at that at that time.

Q. They were selling any way at that price? A. They were at that time.

Q. And you took some orders on approval at the same prices? A. Yes.

Q. Don't you know that was simply meeting their price, your price had been higher than that? A. That was much lower than our price.

Q. I know it may have been lower, but prices had been higher theretofore? A. I think not.

Q. Did you not say a while ago that nobody could furnish powder in the Kanawha district less than 3188
$1.20 and this was $1.10? A. We went down below that a good deal.

Q. I know you did. Take this $1.10 price was a good deal lower than you had been charging before? A. Yes.

Q. August 20, 1892, is this your letter (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-31 and A-32.) 3189

To the du Pont Company:

"Enclosed herewith is copy of our letter this date to the Hazard Powder Company which indicates recent action of the Phoenix Co. in the vicinity of their West Virginia mill.

I have an order for a car of powder, 800 kegs FFF from Stevens Coal Co., at $1.10 per keg, delivery to be made at Acme, West Virginia. This is located on the branch of the Chesapeake and Ohio railroad running from Coalburg, twelve miles south. The rate for switching a car is reported to be $15 or $20, but Mr. Garrison, who owns the

mines, says it is his impression that on carloads from the East the Coalburg rate will be made. Garrison purchased 400 kegs from Phoenix at the price named, but would prefer du Pont or Hazard powder at the same price. Freight considered, this figure seems so low that we gave no encouragement of the shipment. On receipt of advices naming your wishes in the matter, we will decline the proposition or forward you memo

3191 order.

Messrs. Thompson Brothers Railroad, contractors, in addition to their Norfolk and Western works, have taken some seventeen miles near Owensborough, Kentucky. I have an order from them for 800 kegs for later shipment. This trade can probably be supplied best from Sycamore mills, although it might be well to get rates from Mooar, Iowa. The work will be opened some time in September.

3192 Truly yours,

R. S. Waddell, Agt."

That letter was to the du Pont Company. The enclosed copy of a letter is to the Hazard Company. Under date of the 20th of August.

"The Phoenix Huntingdon mills are selling blasting at Jackson, Ironton and on Kanawha River at $1.10 per keg. We know of three carloads that have gone at this figure.

I have orders for Sternberger Brothers, 800 kegs, delivered September 10th; Glove Iron Co., 800 kegs, delivered September

20th; Means Kyle & Co., Hanging Rock, Ohio, 1,000 kegs; all at $1.10 per keg; F. E. Hayward & Co., Ironton, Ohio, 800 kegs at $1.10 per keg. These orders are taken subject to your approval.

Please advise if you want the orders.

Truly yours,

R. S. Waddell, Agt."

3194

Q. What had happened to your business in West Virginia from 1891? A. They started in at $1.48—$1.58 I think in West Virginia, that section of it, and came down at that time to $1.10.

Q. Well, that had been brought down by the Phoenix Company there? A. Yes, sir, after the Phoenix built the mills it went down.

Q. In September, 1892, is that your letter (handing paper to witness)? A. Yes, that is my signature.

Mr. Button: Mark it.

3195

(Same is received in evidence and marked Defendant's Exhibit A-33.)

To the du Pont Company:

"We called upon Crescent Coal Co., principal office, Columbus, Ohio, who purchased powder from you for some months, and learned that they are now handling King Powder. While the price was $1.48, Kings took them from you at $1.42 less 2 per cent. sixty days. They have recently had several orders at $1.25 and two at $1.20 per keg. We thought best to take a conditional order for them for a carload at $1.20 to be delivered November 1st, subject to your acceptance

and approval. They insisted upon holding off until they were ready to buy, but we explained that the heavy demand for sporting powder and the rush to orders for blasting would probably prevent them from getting powder within thirty days of the time they needed it, unless the orders were placed in advance. Please let us know whether or not you will accept this order, so that I may advise Mr. A. O. Mauck, Secretary, and
3197 close the deal.

Yours truly,

R. S. Waddell, Agt."

Q. So the King Company had been competing with you, had it, at that time? A. All the companies were competing.

Q. I thought there was some arrangement between the associated companies that prevented any real competition as you testified this morning? A. Well, the association authorized certain custom-
3198 ers, and frequently they would get into a fight among themselves.

Q. You mean to say that this customer of yours was taken away from you by the Kings Company as the result of some authorization of the Association? A. I don't know.

Q. You know it was not so, that they were all competing, don't you, Mr. Waddell, at this time? A. No, frequently our trade was given to other powder companies.

Q. At this date? A. No, I don't know as to any particular date; but I know very frequently customers were taken away from us and given to other companies.

Q. Yes, in here as your selling price was $1.48 and Kings took that from you at $1.42? A. Yes.

Q. You mean they went into the market and under bid you and got that trade, don't you, Mr. Waddell? A. Well, may be one man may have had a price given to him by another customer in Columbus and went to this customer and gave him the same price, made him the same bid.

Q. That fact is that the King agent took your customer away from you at a cut price, didn't he? A. I presume he did or I would not have said that.

Q. This complete harmony hadn't yet gotten into 3200
working order in September, 1892, had it, Mr. Waddell? A. I didn't get that.

Q. I say this complete harmony between the associates in which they were going to kill off the Phoenix and Chattanooga had not yet got into working order in September, 1892. A. It was in good working order throughout the United States, except right in that exploited field, there was some competition and contention.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

3201

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibit A-34.)

The letter is dated September 28, 1892, to the du Pont Company.

"I wired you yesterday from Louisville, asking $1.19 price for Speed Cement Works.

We were competing with Phoenix and Miami and possibly with Kings, Mr. Gorman the St. Louis agent of Phoenix was in the City and working very hard for the order. We could not get the exact price, but I learned that Speed would be willing to give two or three cents per keg more for your brand than the others, and would prefer to

deal with Coleman. I thought we were competing with $1.15 price and the figure I named would be sufficient. Your reply reached us too late to see Mr. Speed last evening, but he agreed to hold the deal open.

This morning I had a message from Mr. Coleman and at once wired you T/D. Reading:

'Have message from Coleman agent, reading Speed wants 1,000 kegs blasting de-
3203 livered immediately, Speed Station, Indiana, and 800 three months delivery, Grays Station, Knox County, Kentucky. Can close with him at $1.10 for Speed's delivery. $1.20 for Gray's delivery. Answer quick.'

Which we now confirm. Speed is a cold-blooded buyer and it is difficult to get from him any price quoted by another; I feel pretty sure that the Phoenix Company would like to capture this order.

We now have your reply reading: 'Accept
3204 1,000 kegs blasting Speed $1.10 and 800 three months delivery Gray's Station $1.20.'

And have wired Mr. B. Coleman, Agent, in accordance therewith. We hope to have advices from him by early mail tomorrow.

Truly yours,

R. S. Waddell, Agt."

Q. Consequently, on September 28, 1892, in Kentucky and Indiana you were competing with the Phoenix and the Miami and the Kings, were you not? A. I thought I was competing with Kings.

Q. And the Miami, another member of the Association, according to this statement? A. Possibly,

I don't know; that is my best judgment at the time, evidently.

Q. October, 1892, the next one. Are those your letters (handing witness paper)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendant's Exhibits A-35 and A-36.)

To the du Pont Company:

3206

"Herewith we hand you copy of letter written this date to the Hazard Powder Company.

Truly yours,

R. S. Waddell, Agt."

And your letter to the Hazard Powder Company:

"I have just received a telegram from Mr. Rood, who is at Terre Haute, as follows:

'King sold Crawford Company car $1.15. 3207
Zimmerman says has had it offered at $1.15. Zeller & Zigler, Jackson Coal Co., and Erlich want to buy a car each, but want us to name price $1.15 seems to be regular here. Had better see you and adopt plan.'

I wired Mr. Rood to come home, and this will advise you of the condition of things in the vicinity of Terre Haute.

I had a letter from Brazil a day or two ago stating they could buy powder at $1.17½ and declining to receive some from us. This will all make us trouble when we come to settle with Park County, Lancaster Block Coal Co., Diamond Block and others in that locality.

After Mr. Rood's return I may have occasion to wire you Monday, provided, of course, the conditions as to price have not changed in the meantime.

Truly yours,

R. S. Waddell, Agt."

Q. So around Terre Haute the King had gone
3209 down, still further down to $1.15 at that date, hadn't they? A. They had been down, of course, and I was expecting another change in the meantime.

Q. You didn't expect to cut it yourself, though, did you? A. I don't know.

Q. You were just watching those other people competing, weren't you, at that time, Mr. Waddell? A. When it was over, I had it all.

Q. I know, we will get to the time when it was over by and by. Now, is this letter your letter (handing letter to witness)? A. That is my signa-
3210 ture.

(Letter received in evidence and marked A-37.)

Mr. Button (reading): "Cincinnati, Oct. 5, 1892. The Hazard Powder Company, New York City. Gentlemen: Yours of the 4th instant received. Zeller & Zigler, Brazil, purchased a car Phoenix Powder at $1.15 less 2 per cent. before we received your instructions to sell them. We possibly could have held the trade open, had it not been that Mr. Zigler was compelled to leave home and wished to close the deal before going.

"Erlich left Brazil Sunday night to attend the Fair at St. Louis. He is expected back next Friday or Saturday. We indulge

some hope of selling him. The grain powder would come within the restrictions you make. Yours truly, R. S. Waddell, Agent."

Q. Now, on October 8th did you write this letter to the du Ponts (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-38.)

Mr. Button (reading): "Cincinnati, Oct. 3212
8, 1892. Gentlemen: Our salesman undertook to dispose of the Marmet, fine grain powder in the Kanawha Valley, but discovered the prices were very low. George Davis, Hazard agent, had just returned from a trip through the Valley where he was unable to supply the reguar trade of Hazard at $1.15. The Richmond Agency of Phoenix had sold one carload at $1.05. Railroad Contractors at work on an off side of Kanawha River above Charleston, have been buy- 3213
ing at $1.10 and $1.12 per keg. Quite number of sales have been made at $1.10.

"Prince, Dun & Co., King's agents, have sold very small lots, blasting at $1.15 and one 50 keg lot at $1.12. They have sold several lots of rifle at $4.00 per keg. This gives you an idea of the situation in that valley. We suggested to Ruffner Brothers that they make up an assortment for magazine stock. They said they would prefer purchasing at a net price. In discussing this question, Messrs. Ruffner Brothers told us they knew of a sale of a carload powder, recently, at $1.10 less 10 per cent. and one cent per keg drayage. This netted the Company $0.98 less the freight.

3214 *R. S. Waddell—Cross*

"We discussed the car blasting powder now at Miami Coal Works just below Charleston. Ruffner Brothers offered us $1.00 per keg net for the blasting, with 100 kegs FF. additional, at same price. They would also like 60 kegs rifle, 55 half kegs, and 50 quarter kegs. Kegs at $3.65 net; halves and quarters in proportion. Terms 60 days. We could ship a car blasting to The Marmet Company, Raymond City, W.
3215 Va., and in the same car send 100 kegs FF. Blasting and the Rifle Powder. Upon arrival of the car at Raymond City the 800 kegs for the Marmet Co. could be taken out and the fine grain powder now at Raymond City be placed in the car and forwarded to Charleston, some 12 miles up the river.

"I presume if Ruffner Brothers do any rifle trade it will have to be at $4.00, in competition with King's agents. Deducting their commission, would net $3.60 for Rifle.

3216 "The very low prices on Blasting in Kanawha Valley seem to have been caused by the competition for contractors trade on four pieces of Railroad now being built near Charleston.

"The prices of high explosives are equally low. 40 per cent. giant and other brands, are openly sold at 12½c. per pound, sixty days; delivered on the work.

"I agreed to advise Ruffner Brothers on Monday whether or not their proposition would be accepted. Please wire me as early as possible. Truly yours, R. S. Waddell, Agent."

Q. So, at that time, you sent a man through the valley to offer powder at $1.15 and you found

that all of your competitors were selling it there from $1.05 to $1.12, didn't you, Mr. Waddell? A. At that particular time in October, 1892.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-39.)

Mr. Button (reading): "Cincinnati, Oct. 10, 1892. The Hazard Powder Company, New York City. Gentlemen: In reference 3218
to consent given us to sell a car each to Zeller & Zigler and Erlich Brothers, Brazil, we report that we failed to get the Zeller & Zigler order for the reason that our price was above what they claimed to have paid Phoenix.

"We were tendered the Erlich Brothers order, but on the day they offered it, a quarrel arose between the brothers and a law suit resulted for a close of the partnership. The one in charge wished us to place the 3219
car, but we thought it better not to take any chances at such a low price and therefore passed the order. Truly yours, R. S. Waddell, Agent."

Q. So you didn't get the Zeller & Zigler business at that date? A. No.

Q. On account of a cut by the Phoenix. Wasn't the Miami cutting your price at this date also? A. Miami didn't have much in Indiana.

Q. Is that your letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-40.)

Mr. Button (reading): "Oct. 13, 1892.

Messrs. E. I. du Pont de Nemours Powder Company, Wilmington, Del. Gentlemen: Please start the car for Sternberger Brothers, Jackson, Ohio, mentioned in our Order No. 30; the grain to match Hazard's FFF. Blasting and to be packed in FFF. Kegs.

"Sternberger Brothers have purchased the property of Southern Ohio Coal & Mining Co. at Coalton, a short distance from Jackson. This gives Sternbergers control of
3221 nearly all of the coal lands in Jackson County. The Southern Ohio Coal Co. have been buying Miami powder at $1.10 per keg. Truly yours, R. S. Waddell, Agent."

Q. That was cheaper than your price, wasn't it? A. I don't know what they were charging Sternberger that date.

Q. Is this later? A. I sold it to him at $0.75 when I quit.

Q. Well, now, just keep along at the date we are at, Mr. Waddell. A. I cannot remember the
3222 dates when we went down.

Q. When was it that you got this trade all back? A. When was it?

Q. Yes? A. Just before the round-up.

Q. What date? A. July, 1896, I had all those fellows.

Q. How did you get them? A. I got them at the low price of $0.80.

Q. At an equal price? A. I don't know whether it was equal or not; it was as low as anyone would go; Sternbergers' particularly were $0.75.

Q. Well, now, I would like to know what you mean; do you mean that you got these people all back by coming in and cutting under the prices that had been made? A. We went right on down,

see-sawed, just as you are doing now, until we got down to $0.80 and then we quit.

Q. Now, won't you answer the question just asked you; how did you get them back, was it by cutting under the price that they had gotten down to in 1896? A. In a good many cases, yes.

Q. It was? A. In a good many cases; some we held at full prices.

Q. Next month, December, 1892, is this your letter (handing paper to witness)? A. That is my signature. 3224

(Letter received in evidence and marked A-41.)

Mr. Button (reading): "Cincinnati, Dec. 1, 1892. Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del. Dear Sirs: I have written the Hazard Powder Company several letters regarding the small lot prices of Blasting in this and other neighboring markets; have mentioned that Hart. Hdw. Co. advertised on postal cards L. & R. Blasting in small lots to country trade,—$1.25 per keg. We, yesterday, read written quotations of King's at $1.15 per keg to merchant trade, subject to 2% for cash, 30 days; say, $1.12½ net. I have also seen the quotations of Austin Blasting to a city firm, at $1.15. 3225

"Four city houses are held from us on Rifle powder by Kings and Austin agents who sell them Blasting at $1.15 and by this means, command their trade on Rifle powder.

"Mr. Wentworth, a broker who succeeded his brother-in-law, E. T. Applegate, as agent of Kings, stated yesterday to one of our

3226 salesmen, that Applegate had sold more powder for the King Co. in Cincinnati than that company or any of its agents has sold for them in several years; that he, Wentworth, is now selling four times the quantity of King Powder that Applegate had placed. I believe this latter statement is correct. They have a very nice trade in Cincinnati where they purchased from Hazard by a very
3227 liberal distribution of commissions and a special price on Blasting powder. We have thought it wiser to yield a little than to strive for all the trade and provoke further cutting. Truly yours, R. S. Waddell, Agent."

Q. Now, the Laflin & Rand Powder Company stood it about as long as they could up to December, 1892, and then they came in and began to compete with everybody, didn't they, in December, 1892? A. They didn't have much business in the
3228 Cincinnati district.

Q. Didn't they begin to compete in the middle west at that time? A. They were in all the while, but they didn't have any business in my territory.

Q. Now, those prices that are mentioned in Exhibit A-41 to the country trade which had been given by Austin and Kings and Laflin and Rand were very low at that time, weren't they, Mr. Waddell? A. I don't remember how the prices were; they were little retail lots of powder and they divided commissions.

Q. I understand, won't you look at that letter, and isn't it true that those prices on small lots there were cut under the ruling prices in that district at that time that had been made by the Laflin and Rand, Austin and Kings? A. I don't know

what the prices were there then, they were on the decline.

Q. Well, you speak of them here as very low prices, don't you? A. Yes, they probably were, if I said that.

Q. Now, then, the Austin was quite active in competition at this time in cutting your prices, wasn't it in the latter part of 1892, one of the associates? A. In the City of Cincinnati?

Q. All through your district in various places? (No answer.) 3230

(Mr. Button shows paper to witness.)

The Witness: That is my signature.

Q. Do you recollect about that? A. The Austin had a little trade in Cincinnati, two or three customers in Indiana, had a very heavy trade in northern Ohio.

Q. Just which one of the associates was it that was not cutting your price during these years? A. All of the associates were in the general scramble for low prices in the disturbed districts. 3231

(Letter received in evidence and marked A-42.)

Mr. Button: (reading): "Cincinnati, Dec. 1, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Delaware. Dear Sirs:—The Kruse & Behlman Hadw. Co. are excellent customers for both Hazard and du Pont Powder. The senior of this firm called on me about the middle of November and furnished satisfactory proofs that he was offered King and Austin Blasting powder at $1.15 per keg in small lots as needed. We were charging this firm $1.35 per keg. Their sales of rifle run over

100 kegs per month, while their Blasting sales do not average half that quantity. I told the gentleman that we could not meet a one fifteen price on Blasting powder, but until some decision was reached, we would protect him to the extent of ten cents per keg. There was considerable discussion about there being compelled to sell blasting at $1.30 and some times as low as $1.25
3233 per keg, to meet the competition of other merchants on King and Austin blasting.

"Returning to his store the gentleman informed his partners that I had given him a one ten price on blasting. On settling with them a controversy arose which threatened to sacrifice the entire trade of this firm. The Dutchman had gotten mixed and was sincere in his belief that they were to get blasting powder at $1.10 per keg. They owed us about $4,300 for powder and Ctgs. and rather than make the sacrifice I allowed
3234 them the difference between $1.35 and $1.10 on 50 kegs of blasting, making $12.50. It was clearly a misunderstanding, but I thought it a good policy to yield rather than lose such valuable trade.

"We charge rebate account with $12.50 and this letter is written to explain the charge. I hope our action will have your approval. Truly yours, R. S. Waddell, Agent."

Q. Therefore, these prices that were being made by King, Austin and Laflin and Rand of from $1.10 to $1.15 were against your price of $1.35 in December, 1892, weren't they? A. Happens so, on that day, yes.

Q. Did the Miami get over into West Virginia with its powder? A. They have a few customers over there.

Q. Did you write that letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-43.)

Mr. Button: (reading) "Cincinnati, Dec. 20, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del. Dear Sirs:— 3236
We wired you yesterday afternoon message reading:

'May we sell St. Clair Company, Eagle, West Virginia, near Coal Valley, Kanawha, car Blasting at one eleven? Miami-Phoenix price,' and this morning have your reply as follows: 'Telegram received. We accept car St. Clair Company, one eleven.' Earlier in the day we wired you message reading: 'May we sell car blasting to buyer for Great Western Company at one nineteen delivered Peach Orchard, Kentucky,' and wired you 3237
today message reading: 'May we sell Belmont, Montgomery, West Virginia, near St. Clair, car one thirteen,' to which we await your reply. Truly yours, R. S. Waddell, Agent."

Q. Now, the lowest price you had heard of in the Kanawha Valley was about $1.15, that Kings had made; now the Miami and the Phoenix were in there and got it down to $1.11 Dec. 20, 1892, didn't they, Mr. Waddell? A. No, you have been speaking now about a $1.10 price; just a while ago, in the Kanawha River, Tom Davis.

Q. Well, your price was $1.15, that your man offered. We found some at $1.10 and so on, and

now we find the Miami and the Phoenix in there at $1.11, don't we? A. Yes.

Q. So the Miami was competing for that trade and quoting prices considerably lower than the Hazard, were they not? A. They might have done so that day.

Q. Is this your letter (handing paper to witness)? A. That is my signature.

3239 (Letter received in evidence and marked A-44.)

Mr. Button (reading): "Cincinnati, Dec. 21, 1892. Messrs. E. I. du Pont de Nemours & Company, Wilmington, Delaware. Dear Sirs:—Replying to yours of the 17th instant. I think we are in excellent position to take good care of the Pocahontas-Bramwell district through as far as Lynchburg, Virginia. Our travelers can go east via Norfolk and Western Extension and return by Chesapeake & Ohio through New River and

3240 Kanawha, and the expense will be very slightly more than we would have to pay for travelling the C. & O. and returning over the same road. Another pertinent reason is that the large competitors on New River—Wm. Beury, Copper & Co., S. N. Buck and others—are largely interested in the Norfolk and Western district. We understand there associations and I believe will be able to secure a good trade in that locality. We represent for you a very small territory at present, the southerly half of Ohio, Kentucky and a part of West Virginia.

"You are aware that the Phoenix Mills are located at the West Virginia terminus of the Norfolk & Western extension. Although reports have been made to the contrary, these

mills have been rebuilt and are now operating again. I learned yesterday that an injunction had been served which will stop them today. The Phoenix Company have replied to the injunction that had it been served before the mills were placed in repair, they would not have rebuilt; now that the expense has been incurred, and the mills are in operation they will insist upon the county paying them the damage occasioned by their mills having been declared a nuisance. If the Phoenix Company are finally successful, we will be in better position to watch them and compete than would the Chattanooga office who are remote from the scene of action and not familiar with the surroundings. 3242

"Kings are active competitors in Pocahontas district. We, here, are in very good fix for looking after them. It would be my judgment that Cincinnati can take care of the W. Virginia district and that portion of Old Virginia which I have indicated, more economically and successfully than the Chattanooga office. Your wishes in the matter, whatever they may be, will be cheerfully respected. 3243

"I expect to mail you on Friday a comprehensive report now in course of preparation giving full particulars of the new coal fields. Truly yours, R. S. Waddell, Agent."

Q. Now, then, in December, 1892, there was some new and large operations being opened up in this Pocahontas-Bramwell district, were there not? A. Yes.

Q. And this is the same trade which you refer-

3244 *R. S. Waddell—Cross*

red to in your direct testimony as having made contracts with in 1903? A. King, Hazard and du Pont had it all.

Mr. Abbott: 1902, Mr. Button, is what he testified to.

The Witness: 1902.

Q. Well, possibly, 1902 or 1903 when you were at Wilmington? A. We took it all.

3245 Q. Consequently you went there in behalf of the du Pont and Hazard when that trade began in 1892, didn't you? A. No, the railroad was built from the east towards the west and there was a long time that they hadn't reached the Ohio River that I couldn't get in.

Q. Well, you got along among the early ones, didn't you? A. No.

Q. Who was selling that trade then from the east? A. My brother was selling it from Chattanooga; it came around through that way.

3246 Q. What powder? A. He was selling du Pont, and Chattanooga had some trade in there; King got some in through the Chesapeake and Ohio Railway.

Q. And the King was competing pretty actively at that time, weren't they, for that trade? A. The Cincinnati office didn't have any business in there.

Q. Consequently this arrangement of 1902 when you went down there and made some contracts, wasn't a new arrangement, was it? You had been furnishing that trade for ten years previously, hadn't you? A. Yes, we furnished it on open orders up to 1899, and then I contracted the trade for three years in 1899.

Q. But it was part that you had for ten years in 1902, wasn't it? A. We had had a part of it.

Q. Kings had had part of it in there and you had both been competing for it way back here in December, 1892, hadn't you? A. Well, we each had our separate corporation.

Q. Weren't you and King competing for it at this date, December, 1892? A. I think we were at that time.

Q. Then you didn't intend to be understood on your direct evidence that that trade was allotted to you and the King Company for the first time in 1899 when you went down there and made a con- 3248
tract? A. That was the first time it was ever allotted on contract.

Q. Very good; but did you mean to be understood on your direct examination that that was the first time that any division of trade in that valley had occurred between you and the King Company? A. Yes.

Q. That was the first, in 1899? A. The first time that the contracts were ever awarded.

Q. I know it was the first time you made written contracts possible, but was it the first time that there was any division of trade in there? A. 3249
Yes, we were altered on customers, and Kings and myself divided.

Q. You mean that they would get whom they could and you would get whom you could; isn't that what you mean? A. No, we all sold the same companies; I would sell for a little while; then they would sell them a carload. In the end they had equities in our trade and we had equities in theirs, and we discharged these equities, treated these equities in each other's trade by entire separation of the customers.

Q. And that is what you meant in this letter when you said Kings are active competitors in the Pocahontas district, December 21st, 1892; you

meant you were trading each other's equities and dividing the trade between you? A. Oh, no, not at that time, 1892-1899.

Q. I know, 1899. In 1892 you were actively competing with King, weren't you? A. We were selling them there.

Q. Weren't you actively competing with Kings in that valley in 1892? A. Yes, but not necessarily cutting prices.

Q. They were cutting your prices, weren't they?
3251 A. I don't know.

Q. Don't you recollect that; don't you know that they never could sell powder within 5 or 6 cents as much as you could get for your Hazard powder? A. Oh, yes; they did sell lots of it at full prices; they had their friends the same as I did.

Q. Well, is this your letter, December 21, 1892 (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-45.)

3252 Mr. Button (reading): "Cincinnati, Dec. 21, 1892. Du Pont Company, Wilmington, Delaware. Dear Sirs:—Referring to our t/d 19th inst. asking consent to sell Great Western Company, Peach Orchard, Kentucky, a car blasting at $1.19, I base the price on the old freight rate and believed that this was low enough to sell them considering the competition from all sources. We have quite an influence in our favor and I think can get the order at equal prices. The company is now in the hands of a receiver on account of complications growing out of a settlement of the Carlisle estate in this city, but they are entirely solvent and I think there is no risk in selling them.

"Mr. W. S. Howell, general manager, has called two or three times but we have not yet reached an agreement as to price. The Chesapeake and Ohio Railroad have recently taken charge of the little road running from their main line to the mines, which in times past has charged an extortionate freight. I am now named a rate of 82c Cincinnati to the mines and this could be probably bettered on a through freight.

"I will see Mr. Howell again on Saturday 3254
or Monday and may have to wire you for another price after we get together. I can get the figures he has from all the others. Truly yours, R. S. Waddell, Agent."

Q. Consequently, on December 21, 1892, you were experiencing competition from all sources, weren't you, Mr. Waddell? A. Yes, they were in the market.

Q. You mean by that you were competing with all of the associated companies as well as these three new ones, didn't you? A. Yes, whenever the 3255
price went down they bought at the price.

Q. On December 24, 1892, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked A-46.)

Mr. Button (reading): "Cincinnati, Dec. 24, 1892. Du Pont Powder Company, Wilmington, Delaware. Gentlemen:—Our Mr. Hill, who has just returned from Bramwell, Pocahontas district, saw quite a number of quotations. Mr. Minnegerode, Lynchburg, Va., sales agent for Chattanooga Powder Company, is quoting their brand to mines

in that locality at a dollar per keg delivered. The consumers are divided as to their opinion of the powder; some of them will not take it at any price, while others consider the quality exceptionally good. The Phoenix and Kings are their most active competitors in that locality. Truly yours, R. S. Waddell, Agent."

Q. So, there is a cut of another ten cents since
3257 we last heard of it, isn't it, Mr. Waddell, a dollar ten to a dollar in that valley? A. Yes.

Q. And here you have four companies in there, the Phoenix, the Kings, and yourselves and the Chattanooga, all competing for that trade, weren't you? A. We were a very small factor there at that time.

Q. You were competing, nevertheless, weren't you? A. Yes, we were starting in there.

Mr. Abbott: You said 1896; you meant 1892.

3258 Mr. Button: 1892; did I say 1896. Number 46?

Q. Mr. Waddell, did you write these six letters in the month of January, '93 (handing papers to witness)? A. That is my signature to all of them.

Mr. Button: Mark this one first, please.

(Same received in evidence and marked Defendants' Exhibit A-47.)

Mr. Button: "Cincinnati, January 4th, 1893. Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Gentlemen:

We confirm message to you this date reading: Laflin and Rand have offered Great

Western, Peach Orchard, Ky., at One Ten. We had order One Fifteen. Must meet price or release. Advise.'

I closed an arrangement with W. S. Howell, for a car of Powder to Great Western Coal Co., Peach Orchard, Ky., at $1.15 per keg, delivered, subject to their selection of the special grain of Powder that they would require. Mr. Howell left for the mines and I was to wire him the following day whether the order was accepted at $1.15, and he was 3260
to furnish us the size, grain required.

I wired accepting the order. It appears upon his arrival at Peach Orchard, he received a letter from Ed. Taylor, Agent, L. & R. Cincinnati, under date, December 29th, which reads:

'He had heard they were in the market for a car load of powder and would be pleased to quote him a price.' Howell solicited his price by wire, and received a message quoting $1.10 per keg. This was con- 3261
firmed by letter. The correspondence is now submitted to us, so there is no doubt about the order. We are given the option of furnishing the car at $1.10, this explains my telegram to you.

Mr. Howell was thoroughly satisfied with the $1.15 price, and if we make the sale, can credit the L. & R. Company with knocking us out of $40.

Truly yours,

R. S. Waddell, Agent."

Q. Now, Mr. Waddell, that letter indicates that in January, 1893, the $1.15 price which you quoted

3262 to this concern in Kentucky was so low that you were obliged to wire for permission to make the quotation yourself, didn't you? A. I always had to wire for instructions.

Q. You did in this instance? A. Yes, sir.

Q. You didn't have to wire for instructions when you were selling at the ordinary list price, did you? A. No, it was only in the disturbed district where we were in a fight and there was general confusion.

3263 Q. Therefore this $1.15 price was so low for your du Pont powder that you felt obliged to wire for permission to make it, didn't you?

The Court: $1.15?

Mr. Button: $1.15.

A. I had to wire whenever I went below the figures given me.

Q. Whereupon, after you had taken the order, the Laflin & Rand Company came in and cut your price five cents a keg, and got your business away from you, didn't it? A. Yes.

Q. On that date? A. On that date, yes, sir.

3264 Q. Was it on this date that you testified to the other day, that the competition between the Laflin & Rand and the du Pont Company during this period was nominal and not real, was it the period you were mentioning? A. This was the period; but outside of this district. In the disturbed district there was more or less confusion in prices and more or less competition between the associated powder companies.

Q. As I recollect it, this disturbed district took in some eight or ten or twelve states that you mentioned, or thereabouts, didn't it? A. Took in the districts that I described.

Q. And it was all over the parts of the United States in which black blasting powder was consumed, was it not? A. Oh, no.

Q. Where was there another district in which so much was consumed? A. Pennsylvania district consumes more powder than two or three other of these put together.

Q. In the anthracite district, you mean? A. In the coal, bituminous as well as anthracite district.

Q. Where the powder is and always has been furnished by small local concerns, is not that true? A. No, they do not reach the Pittsburg district, the bituminous field extensively; most of that powder 3266
has been furnished by the old companies, the big companies.

Q. That is the Western Pennsylvania? A. Western Pennsylvania and the bituminous field, yes.

Q. Outside of Pennsylvania coal fields, this large disturbed district as you call it, was consuming most of the blasting powder, was it not, in 1893? A. Yes, I should think it was; that is the north and the south district put together.

Q. And now you say that the associates cut each other's prices all through that district during that period? A. They were dragged into the fight and 3267
they competed with each other. For instance, all the agents were given a price; I knew when the Laflin & Rand agent got his price and he conferred more or less, he knew practically what my price was all the time, or could estimate it.

Q. Did you know of this $1.10 price on January 4, 1893, when the Laflin & Rand man got his customer away from you? A. No.

Q. You didn't? A. I possibly knew of it, but I may have been in another part of the field; I was not omnipresent and on hand at all parts of the field at the same time.

Q. Was there any time you were present all over the district? A. No; they were made for one section, that particular price, and I would go after another then.

3268 *R. S. Waddell—Cross*

Q. Was this period in 1893 the period concerning which you testified yesterday forenoon that this contest was carried on by the associated companies as a unit against the Phoenix, the Chattanooga and the Southern? A. Yes.

Q. Same period? A. Yes, same period.

Mr. Button: Mark those other papers.

(Same received and marked Defendants' Exhibits A-48 to and including A-53.)

3269 (Reading): "January 4th, '93." That is the same date, to the du Pont Company: "When the question of price had to be determined, with Marmet Co., I found they had $1.10 named, them by three Companies, and saw a letter from their Mine Superintendent, that a Salesman for Phoenix had called and offered $1.10, and said he would beat this figure, if necessary to take the order. The superintendent wrote, the man intimated, as low as One Dollar per keg. I thought best to close the deal. Herewith I

3270 hand you order for the car.

Truly yours,
R. S. Waddell, Agt."

Q. That was about the distance below your prices that the Phoenix kept all the time, from five to ten cents, wasn't it, Mr. Waddell? A. They alternated.

Q. Alternated from five to ten cents, you mean? A. No, they alternated with the associated companies, sometimes below and sometimes above.

Q. So there was a period when the du Pont Company was below the Phoenix price, is that what you mean? A. We could not have taken the business otherwise.

Q. You could not? A. No.

Q. You could not take the business at equal price? A. There was some trade we could hold at equal price.

Q. When was that period and where that you cut under the Phoenix price with the du Pont powder? A. I could not specify individual customers or individual transactions.

Q. Will you specify for the Hazard Company—where that was that you cut under these prices? A. I could not give you fifteen years ago where I 3272
had a special deal on a given day at a given price.

Q. But yet you can remember everything that was in the meeting or on the minutes from 1871 to 1882, Mr. Waddell, in detail? A. No, not everything.

Q. So as to identify them and the places you saw them and what they were about? A. I knew when I saw a paper and was able to identify it.

Mr. Button: On January 5th, 1892, this is to the Hazard Company:

3273

"Dear Sirs: Yours 30th ult. received and noted. Am glad to see you are again in the market on Blasting Powder. There has been unusual activity in Blasting powder during the past week and a disposition to shove prices to a lower point. I have missed the sale of three carloads by holding firm and have heard of quotations considerably below any we have suggested.

I sent you a good collection of orders yesterday and will see what can be done to secure others. Are you in position to sell Powder along the Norfolk & Western R. R. in W. Va. at prices ranging from $1.10 to $1.20? The mines are located between

3274 Vivian and Graham. This will be an important coal field and it would be well for you to get freight rates into that district. Our strongest competitors are Phoenix, Chattanooga and King.

Truly yours,

R. S. Waddell, Agt."

3275 Q. Therefore you were competing with these three companies in January, 1892? A. Yes, sir. Q. That is a year before? A. Yes, I entered that field at that time.

Mr. Button: A letter to the du Pont Company, January 9, 1893:

"Dear Sirs: On Dec. 10th, I received a letter from Major Dawes, President St. Louis & Big Muddy Coal Co. copy of which I enclose. I have had two or three conferences with Major Dawes and I learned that
3276 the price of $1.10 was named the Mngr. of his mines by the Chattanooga Powder Company.

Mr. Howell, Manager of Great Western Coal Company, Peach Orchard, Kentucky, when negotiating with us for their car, told me he had just visited the Big Muddy mines and related a conversation with Major Dawes in which the latter stated he expected to buy du Pont powder at $1.10, as he had been quoted this price by two companies. I talked the Major into paying $1.20 for the December car and told him that I was not satisfied he could buy first class goods any cheaper than $1.20.

We stood firm on the Great Western deal

and lost that to L. & R.; I also stood pat on $1.12½ to Dayton Coal & Iron Co., and lost that 400 keg car; but we can hold their trade at equal figures on the next deal. Other quotations made our customers convinces me we may have trouble at Big Muddy, although I shall try to get $1.20 for all they take. I give you this history now, that you may be fully advised if at any time we may submit the subject.

3278

Truly yours,

R. S. Waddell, Agt."

Q. So over in this locality the Chattanooga was quoting low prices and the Laflin & Rand again had gotten away some of your trade, had it not, in their territory, Mr. Waddell? A. Well, that was in the St. Louis district, close to the St. Louis district, and the Laflin & Rand reached over there, you know; you could not have perfect harmony in prices. 3279

Q. That is some ways from Peach Orchard, Ky., where they got the order from this customer which you refer to? A. They got an occasional one.

Q. And also this seems to be a locality and a date on which you were able to place du Pont powder if you could have equal prices, was it not, as you mention in the letter? A. There was some customers.

Q. This was one of them, wasn't it? A. That was one of them.

Mr. Button: December 10, 1892, this is to yourself:

3280 *R. S. Waddell—Cross*

"Cinti., O. Dec. 10, 1892.

R. S. Waddell, Agt.,
Cincinnati, O.

Dear Sir:—

Yours 8th on hand. I have much lower price than $1.20 for Powder. How is it? We expect to stay with you but expect you
3281 to protect us.

Yours truly,

(Signed) E. C. Dawes."

This is January 14th, 1893, to the Hazard Powder Company:

"The Hazard Powder Co.,
New York City.

3282 Gentlemen:

Yours 12th received.

Dugger & Neal:

I understand we had consent to sell these parties below the price obtained, but want to get all the market conditions will justify us in asking. I cannot predict safely whether we will be able to get more than $1.20 for the last carload or not. There is an unusual activity among our competitors. They have, during the past ten days, forced prices down generally, throughout our District. Several of these cuts have been fool-

ishly made. I have sacrificed some orders, believing there was no foundation for the demands of Operators. I sold one carload of Powder at $1.15, closed every detail of the trade, except matching the size grain. Laflin and Rand office heard of the deal, and wired the man, offering him $1.10. We were asked to meet it, declined and L. & R., furnished the goods, I think, without ever making any inquiry about the rate of freight.

Truly yours,

R. S. Waddell, Agt."

Q. Now, there was an instance in which the Laflin & Rand knew your prices and deliberately cut it, wasn't it? A. I don't know whether they knew it or not.

Q. You thought they did at that date, didn't you? A. Yes, but they may not have known.

Q. And it was also a time when, during which prices, during the past ten days had been forced down generally throughout the district below our prices, is not that true? A. Yes, they were probably in the saddle at that time.

"The Hazard Powder Co.,
New York City.

Gentlemen:

I have wired you message today reading: 'May we sell Morley Brothers car Blasting for shipment March fifteenth; also four hundred Rifle, May twenty fifth Blasting one twenty; Rifle three fifteen delivered. These prices named by three competitors.' and now confirm.

3286 *R. S. Waddell—Cross*

The message explains fully. I know that two of the offers are from Kings and Austin; the other, Morley Brothers claim is from Laflin & Rand. French of the Kings, and a representative of L. & R.'s Chicago house have recently called on them. I await your reply.

Your telegram has come in time for me to advise Mr. Rood by mail to night, to try
3287 and close the deal when at Saginaw on Thursday morning. I do not believe that Morley Brothers will feel inclined to favor us by giving notes, but think they will make a written contract to take the Powder at the prices named, making sale absolute. As a rule, business men who command the means that Morley Brothers do, will not give notes, particularly for goods that have not been delivered. If a written contract would suit you as well, please wire me Wednesday so I can advise Mr. Rood to this effect.
3288 Otherwise, we will exhaust the deal on the terms of your telegram.

Yours truly,

R. S. Waddell, Agt."

Q. So in 1893, January, you were proposing to the Hazard Powder Company, at least to make a contract for the sale of powder, were you not, Mr. Waddell? A. It looks like I was for a car load, yes.

Q. And it doesn't quite read as if it was a surprising situation, does it, Mr. Waddell? A. Well, that is wholly different from a time contract for a term of years. On a secret contract that is a wholly different proposition.

Q. A secret contract? A. Yes.

Q. This was up in Michigan and the King and Austin and Laflin & Rand were competing with you there at that date? A. Yes, they always had.

Q. February 2, 1893, did you write this letter (handing paper to witness)? A. Yes, those are my signatures.

(Papers received in evidence and marked A-55 and A-56.)

3290

"Cincinnati, Feb. 2, 1892.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen:

Herewith I hand you copy of a letter from E. C. Dawes, Esq., President St. Louis and Big Muddy Coal Co.—

I do not believe Mr. Dawes would claim to have a ninety five cent price on powder, unless the quotation had been made to him. —I presume this is below any figure you 3291
would care to make, to hold trade in that locality; however, the Phoenix and Equitable mills may have started, and there is a possibility that such a price has been quoted. I have, in compliance with your recent instructions, made Maj. Dawes a price of $1.10 on the last three carloads sold to them. The car he refers to as his last order, is our No. 74, dated January 30th for early shipment.

I expect to have a private talk with Maj. Dawes tomorrow, and will then get at the source of the offer. If so, I will wire you, and this letter will explain.

Yours very truly,

R. S. Waddell, Agt."

3292 *R. S. Waddell—Cross*

Q. There you are getting down from $1.50—$1.48 to about ninety-five cents in the course of something less than two years, Mr. Waddell? A. Yes, we got down to eighty cents.

Q. And when you first heard, or when you did hear of a ninety-five cent price for powder on February 2d, 1893, without knowing about it you immediately assumed that it was a price made by the Phoenix or Equitable, one of these new companies, did you not, in this letter? A. I
3293 guessed at it, yes; it may have been made on du Pont powder.

Q. Possibly; but your judgment at that time was that it would have been made by one of these new companies, was it not? A. It was the rule always to lay it on the independents.

Q. Was it a pretty safe rule to follow? A. On the independents, yes, for a cut in price.

"Cincinnati, Feb. 7, 1893.

The Hazard Company,
3294 New York City, N. Y.

Dear Sirs:

Crawford Coal Co., Brazil, Indiana, purchased a carload of Ohio powder at $1.05 per keg, to be delivered February 1st. The Ohio company also sold Brazil Block Coal Co., 5 carloads at same price. The superintendent of Crawford Coal Co., says he will take his next car of Hazard, if you can meet the Ohio Powder Co's price. He would want the car delivered April 15th; would accept either Hazard or du Pont brand. Mr. Risher, Manager of Crawford, would like an early decision.

Truly yours,
R. S. Waddell, Agt."

Q. So in February, 1895, the Hazard Powder Company was coming in and cutting, was it not? A. Yes, and if we had gotten that order we would have shipped it for Hazard from the Ohio mills.

Q. Yes: you mean that the Hazard knew all about that. A. Might have known of it; I don't know what the Hazard knew, but I know that we did ship our powder from the Ohio mills and they were out as our competitors in this matter.

Q. When did you ship powder from the Ohio mills? A. Oh, I have shipped fifty thousand kegs 3296
from the Ohio mills.

Q. However, you thought that your principals, the Hazard Powder Company, didn't know so much about it but what you ought to report it? A. It was my duty to report everything and leave it to them.

Cincinnati, Feb. 15, 1893.

Messrs. E. I. du Pont de Nemours & Company,

Wilmington, Del. 3297

Dear Sirs:

We had an order from Crawford Coal Company Brazil Indiana for a car of powder to be shipped about April 1st; price $1.05 per keg. They specified Hazard or du Pont powders. The Ohio company sold Crawford Coal Company a car load at $1.05 and have recently sold Brazil Block Coal Company 5 carloads at same price. We submitted the proposition to the Hazard Powder Company, who say they decline any and all orders at $1.05 and prefer that the Ohio Mills take the Crawford Coal Com-

pany's trade. Before turning down the order I thought best to submit it to you.

Yours truly,

R. S. Waddell, Agt."

Q. Now, then, who owned the stock of the Ohio Powder Company, Mr. Waddell, if you know? A. Well, du Pont, Hazard, Laflin & Rand, Browner
3299 and Pitcher, I know.

Q. It was not a company that was controlled by either the Hazard or du Pont companies? A. Their relations were pretty friendly, yes.

Q. Was it a company whose stock was controlled by either the Hazard or the du Pont companies? A. No, not stock, but they were in the association —members.

"Cincinnati, Feb. 28, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

3300

Dear Sirs:

I wrote you some time ago that 400 kegs of the last car ordered by L. M. Baird, Evansville, was intended for the First Ave., Coal Company, and purchased by Mr. Kellogg, a merchant of Evansville. He wrote Mr. Meecham, Mr. Rice and many other agents endeavoring to break the price. We quoted $1.30 knowing that Mr. Baird had sold the 400 kegs. When the car arrived Mr. Baird delivered half of it to First Ave., Coal Co., I now have a letter from him and quote:

'The First Ave., Coal Co. say positively

that they have been offered Austin, Miami and Laflin & Rand Blasting at $1.20 per keg in car lots of 400 kegs delivered here—and some other brands at $1.09 per keg. Please advise me fully relative to the foregoing cuts as the trade here is badly demoralized and will remain so until we know where we stand.'

My judgment is that the time has passed for middle men to hope for a profit between buyers of carloads and manufacturers. 3302 Mr. Baird has been very faithful to you and before cutting him off with a plain statement of the situation, I deemed it best to consult you. We are selling Ingle at $1.20 and have given the same price to Mr. Baird. The First Ave. Co. are entitled to the same price. I think Mr. Baird would consent that we assume the account of First Ave., Coal Co., and release him from that much of his account so that we may take care of that trade direct until such time as the price will admit of some margin to Baird. 3303 This I think should be satisfactory to Mr. Baird as we are not competing with agents, but with other manufacturers. Would such a course with Mr. Baird meet with your approval?

Truly yours,

R. S. Waddell, Agt."

Q. Now, Evansville, was that Evansville, Illinois? A. Indiana.

Q. There you were competing with the Austin, Miami, and Laflin & Rand, were you not, at that time? A. Our agent was, yes.

Q. Now, the next one is March 7th, 1893. Are

these your letters (handing papers to witness)? A. These are my signatures, excepting that second one (indicating); I don't know who that is by—per A. A. C.

"Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:—

3305 Herewith I hand you a printed Price List, A. J. Rummel, Toledo, O., dated Feb. 3d, '93, which under head of Ammunition quotes:

Austin New Brand Crack Shot
Powder per keg.....$3.00
Austin Rifle and Shotgun per keg. 3.00
Blasting Powder per keg..... 1.25

Although Mr. Rummel quoted the latter at $1.25 he is selling it in small lots at $1.05 to parties in Fostoria, Mansfield and other
3306 Northern Ohio towns. We have some Hazard customers in that locality who are liberal buyers, have some powder in stock, and are not feeling in a very pleasant frame of mind because of our firmness in maintaining List, with authorized discounts, to them.

The Austin Co., are undoubtedly making pretty heavy inroads on Hazard business; they cannot sell their goods at equal price, but they are creating custom and winning favor of important dealers by their liberality. Buyers call this aggressive business and commend the disposition of the Austin Co., to become the ruling spirits in this territory. Such a sentiment is very favorable to the Austin Co., and will be difficult to

dislodge; they have placed traveling men on the road who are now working the West Va. and Indiana fields. Their only competitors are Kings and Ohio, who are making a price of $1.05 and in some instances $1.00 on carloads.

The customer who encloses us the Rummel Price List requests that it be returned to him. When it has served your purpose will you kindly mail it back to us, and 3308
oblige.

I also, as a side feature, call your attention to Standard Ammunition Company's Loaded Shells—25000—discounts 40-10 10-10 per cent. You remember I mentioned last week that Austin Co. is selling in this city at $2.75 per keg for Rifle Powder. I should think their price to Rummel must be in the neighborhood of $2.50, as he does not do business for glory.

1 Enclosure. Truly yours, 3309
H. R. S. Waddell, Agt."

(Papers received in evidence and marked Defendant's Exhibit A-64 to A-67, inclusive.)

Q. So in March, 1893, the Austin Powder Company was getting your trade throughout the country districts of Ohio, all through West Virginia and all through the Indiana coal fields at a large cut under your Hazard and du Pont prices, was it not? A. I don't know whether it was under them or not; they evidently were in command of the trade at that particular date.

Q. You say you don't know whether it was under them or not; you say here the Austin Com-

3310 pany was undoubtedly making pretty heavy inroads on Hazard business; they cannot sell their goods at equal prices, but they are creating customers and winning favor of important dealers by their liberality; don't you know they were cutting under your price on Hazard powder by that statement? A. They may have been at that particular date.

Q. You knew it in March, 1903, didn't you, and you knew it extended to three states in this dis-
3311 trict, did you not? A. Yes, in a very mild way; they didn't have much trade.

Q. It was so mild that such a sentiment is very favorable to the Austin Company and will be difficult to dislodge? A. Yes, but we dislodged it.

Q. Oh, you did? A. Yes.

Q. Did you find it difficult? A. We probably had to go down under a little while.

Q. Are you able to state the date on which this dislodgment began, Mr. Waddell; can't you fix the date now before we get to it in this correspondence? A. Yes, on the first of July, 1896.

3312 Q. That is when it was all over? A. That is when we got together, yes.

Q. That is when they came to terms; they had been cutting each other's throats long enough at that date, didn't they, Mr. Waddell? A. That is when they bought Phoenix and Chattanooga and 49 per cent. of Equitable, but they all went into the pool.

Q. They bought 49 per cent. of the Equitable in 1896? A. Yes.

Q. Is that the concern, concerning which you testified in the Government case? A. Yes.

Q. Speaking of the Phoenix, page 126: "The first action I took with reference to the Phoenix Powder Company was I received instructions from

the Hazard Powder Company to go to St. Louis and meet a man named Goin, at the hotel. Q. Who was the man? A. He was the Superintendent of the Anthracite Powder Mills in Pennsylvania. Q. In Pennsylvania? A. Yes, those mills being operated by the Hazard Powder Company. Q. What were you told to meet them for? A. To inspect and give him my judgment as to a location that he had selected for the purpose of building a rifle powder mill for the Hazard Powder Company near Bellville, Illinois. Q. How near the 3314
Phoenix mill, if you know, was this located? A. Within three or four miles. Q. What did you do? A. I examined the site and remained there a week. Goin and I searched for other sites in the locality. I reported to the Hazard Powder Company the result of our work. I didn't like Goin's selection. Q. I will ask you to state whether or not there was a mill built there, not by the Hazard Powder Company nor by any one of the associated companies? A. The du Pont Company joined Mr. Olin and others? Q. Of what company? A. Of the Equit- 3315
able Powder Company, and built the mills just north of Bellville, probably thirty miles. Mr. Spooner: When was this? Mr. Scarlet: In 1892. Q. In 1892, wasn't it? A. About that time." Did you so testify? A. I testified that way and I believed it.

Q. Oh, then you testified on the basis of what you believed rather than what you know, Mr. Waddell? A. Well, everybody in our country believes that du Ponts were in with Olin and it was generally reported over the country that they were.

(Question repeated.)

A. No, on what I don't know I believe—believe I know definitely.

Q. Then there is no way when we take one of your answers to tell on which basis it is, whether it is your knowledge or your belief, is there, Mr. Waddell? A. Yes.

Q. How can we tell? A. I know about what I am talking about—I think I did.

Q. Oh, you do, do you; maybe you can tell, but how can we tell, Mr. Waddell; you don't know, do you? A. I don't know how you can tell anything.

3317 Q. Well, you testified here within ten or fifteen minutes that it was in 1896 that they bought their interest in the Equitable, didn't you, Mr. Waddell? A. Yes; I was very greatly surprised to find that that was Mr. Olin's testimony in the case.

Q. Mister who? A. Mr. Olin's testimony in the Government case? We always believed the du Ponts were interested in Equitable from the start in 1892; I knew no different until Mr. Olin had testified.

Q. That is why then—that is the belief that you had, gossip in your country out there that enables
3318 you to state that the du Pont Company joined Mr. Olin and others of the Equitable Company and built the mills just north of Bellville, thirty miles; is that the basis of that testimony? A. Yes, we didn't compete very strongly with the Equitable.

Q. Was that the basis of the testimony? A. Well, it was based on what I knew generally of the trade and of the ownership of the Equitable.

Q. Pretty positive testimony, wasn't it, Mr. Waddell, in the Government suit; you testified to that as a fact? I thoroughly believed it, yes.

Q. You testified to it as a fact? A. Yes.

Q. Did you know it was true? A. Why, I hadn't seen the stock certificates or anything of that kind.

Q. What had you seen? A. Well, I had seen

the competition with Equitable; I had seen the conditions in which they competed with us as compared with Phoenix, which was a neighboring mill; our fight was made chiefly against Phoenix.

Q. What else had you seen besides competition? A. Well, the general discussion with the trade of the country—we all believed that Equitable was owned——

Q. I understand, but I am getting at the basis of that belief. You heard discussions among the trade and you had seen the competition; had you 3320
seen any of the documents on that subject? A. No.

Q. Seen any checks, any contracts? A. No.

Q. Any stock books? A. No.

Q. The fact is you didn't know anything about it, Mr. Waddell, wasn't that it? A. No, I believe that Laflin & Rand is owned today by the du Pont Company and I never saw any of the documents.

Mr. Button: I move to strike the answer out.

The Court: Yes, it may go out as not 3321
being responsive.

Q. Have you any way of telling how much influence that testimony of yours may have had on the mind of the Judge who decided this case, Mr. Waddell? A. No, I have no idea.

Q. You haven't, have you? A. No, not very much after Mr. Olin had testified, the present president of the company, that du Pont didn't own it until 1896, when they sold 49 per cent. of the stock.

Q. That is, you think they would believe Mr. Olin rather than your statement, is that what you mean?

Mr. Abbott: We object to this line of interrogation.

The Court: I think it is all proper except possibly the last one or two questions.

Mr. Abbott: That is what I mean.

The Court: Answer it.

(Question repeated.)

A. Mr. Olin was the president of Equitable and was in better position to know the actual facts than
3323 I was.

Q. By that you mean that you didn't yourself know the actual facts? A. I thought I did.

Q. Well, you didn't, did you? A. It seems not. Mr. Olin had testified—I believed him.

Q. March 15, 1893, to the Hazard Powder Company—I beg your pardon, this is the letter which you say you don't know whether you signed or not; you don't know that handwriting (handing paper to witness)? A. Signed "Per A. A. C." or A. A. Company—I don't know which it is.

3324 Q. Well, we will omit it; it doesn't matter.

Mr. Button (reading):

"Cincinnati, March 20, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

In further mention of the contracts made by Chattanooga Powder Co., along the line of L. & N. R. R., between Winchester, Ky., and Knoxville. Our Mr. Hill has returned from that locality and reports that some of these contracts were made on the basis

of a mill price f.o.b. Chattanooga, of 85 cents per keg. In figuring the contracts made at $1.09 Mr. Hill states that the representatives of the Chattanooga Co. took as a basis —85 cts. per keg. f.o.b. Mills. Whether there is a local from their Mills, which are a short distance east of Chattanooga, I cannot say; but of this I presume the Chattanooga Office can give you full particulars. All of the conversation with the coal operators in Southern Ky. seems to point to 3326
an 85 ct. Mill price as a basis.

Truly yours,

R. S. Waddell, Agt."

Q. That was lower than any price that had been made up to that time, wasn't it, March, 1893, made by the Chattanooga, Mr. Waddell? A. I presume for that trade, it was.

Mr. Button (reading): 3327

"Cincinnati, March 28, 1893.

The Hazard Powder Co.,
New York City, N. Y.

Dear Sirs:

Several complaints have come to us lately from very good customers; some of these we have investigated. I enclose copy of a letter from McKeehan Heistand & Co., Hillsboro, O., who handle for us about 150 to 200 kegs Rifle powder, and about 100 kegs Blasting per year. They had just paid

us $1.30 for Blasting powder, I did not understand their complaint and had Mr. Rood drop off on his way to Chillicothe. A salesman for M. Bare & Co. had called and solicited McKee, H. & Co. to purchase a carload Miami Blasting. They asked his price and he said he thought he could get it for 90 cts., f.o.b. Cincinnati, if they would take a four hundred keg car at one shipment; he told them that he had a One dollar price
3329 on 50 and 100 keg lots and had been selling lots of powder at that figure. One dollar f.o.b. Cincinnati would mean $1.06 delivered Hillsboro.

I had last week tested a contractor in this city on a 400 keg car. We quoted du Pont powder, the brand he had used, at $1.15; he told us he had two objections, which he stated frankly: One, that quantity was too large; the price 15 cents per keg too high; that he was buying in 50 keg lots at $1.00.
3330 Our lowest price on small lots of Blasting is $1.25—of course we are out of the market entirely.

The carload trade is being assiduously drummed at $1.05 per keg throughout Ohio. At present the outlook for our trade is pretty gloomy, but something may occur to put us on a better footing before any more of our old customers slip away.

I recently sent you a contract which the Chattanooga Co., is making with all Coal Cos. in the vicinity of Pittsburgh Ky. or along the L. & N. R. R. north of Knoxville. In this Pittsburgh Jellico region there are several fine mines. They are all paying on a basis of 85 cts. per keg at Chattanooga mills, which makes their powder cost deliv-

ered $1.05 to $1.09 per keg. These prices shut us out entirely. I have felt that we could not afford to do business in that part of Kentucky at less than $1.30 and have been charging Laurel, Peacock, Pitman and others $1.30 per keg. They have all taken trial lots of Chattanooga powder with a view to changing on account of the difference in price of 20 to 25 cents per keg. These people always preferred Hazard powder at equal prices, or I think an advance of 5 cts. 3332
per keg. The freight from Cincinnati to these points is about 30 cts. per keg—this shuts us out.

With very active competition of Kings, Miami, Austin, Phoenix and Chattanooga and their freight advantages from their respective districts which they can reach more cheaply than we can, very great sacrifices of our trade are being made. How much of this can be retained when prices are again restored, I cannot say. Our experience has 3333
been that with the advantages growing out of a satisfactory arrangement, considerably over 50% will be held by these rival companies. It would take three or four months to regain any portion of this trade so that if the purpose is formed to recover lost ground pending restoration of prices, some time should be allowed for the work. I give you these impressions that you may be advised of the situation.

Truly yours,

R. S. Waddell, Agt."

Q. On March 28th, 1893, had this contest begun

under which the associated companies as a unit were killing off the Chattanooga and the Phoenix, Mr. Waddell? A. Had it begun?

Q. Yes. A. Yes, it had.

Q. It had. Chattanooga price was about 25 cents below yours that you had made in that district then? A. Yes, it should have been 40 cents below that, we were shipping our powder from Hazardville, Connecticut, clear down into Kentucky at ex-
3335 orbitant rates of freight and we had no business in there.

Q. And it appears from that letter also that at least five of these companies were very actively competing with you at that time, that is true? A. They were at that time, but at the round-up we held the trade.

Q. We will remember that when we get to it, Mr. Waddell. A. I will give you a list of them.

Q. And it also shows that in that district at least you could sell Hazard powder at equal prices also, but mostly at five cents more, didn't it? A. I had
3336 a few personal friends that paid me more.

Q. Well, these were among them? A. They were among them, yes.

Q. So you never had to cut the price for them, you could get it back at equal prices, could you not? A. I could.

Q. And I suppose of course you knew more about that situation when you wrote that letter than you do now, Mr. Waddell? A. Oh, yes.

Q. The next month, April, 1893, did you write those two or three letters, three of them I think (handing to witness)? A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibit A-68 to and including A-72.)

Mr. Button (reading): "Cincinnati, April 4, 1893. The Hazard Powder Co., New York City, N. Y. Dear Sirs: Herewith I hand you copy of a letter from David Ingle; also one from Dugger, Neal & Co. The latter do not know that we have sold any powder at $1.05, but they do know that that is the popular price quoted by L. & R., Kings, Ohio, Austin, Miami and other companies throughout the state of Indiana. The representatives of these Cos. seem to have been given a limit 3338
price; they have called and left written quotations on the backs of business cards and these have been handed and sent to us, indicating that there is no telegraphing for authority, nor permission to quote.

Four of our customers have bought powder at $1.00; several others have purchased at $1.05. With the $1.10 limit which we have placed upon us, there is no need of calling upon the trade.

Mr. Rood and Mr. Hill returned Saturday from trips through Indiana and Ken- 3339
tucky respectively and stated that they passed several orders, preferring not to quote. Powder is sold in small lots at $1.10 and $1.15; I do not think any buyer of a ten keg lot pays more than $1.15. With our $1.25 price, we occasionally sell a keg to a country dealer but miss ten sales where we make one. Do you prefer to turn down the carload as well as the small lot trade, or do you desire to change your policy in any respect concerning all or any part of the trade.

Mr. Rood goes into the Kanawha Valley this week to settle the George Davis business and incidentally to seek powder orders.

3340 He will encounter a price of $1.10 above Hawks Nest and One Five to One Seven below on Kanawha River.

Truly yours,

2 Enclosures. R. S. Waddell, Agt."

Q. Losing a good deal of trade at that time, weren't you, Mr. Waddell? A. We had, yes.

3341 Q. These days seem to be pretty continuous through these months, don't they? A. That is only one side of it.

Mr. Button (reading): "Cincinnati, April 12, 1893. The Hazard Powder Company, New York City, N. Y. Dear Sirs:

Yours 8th inst. received.

I think you do Mr. Rood an unintentional injustice, particularly in regard to Dugger & Neal complaint. No one from our office has visited Dugger & Neal since a year ago

3342 last Feb. when Mr. Rood called on them. I have been trying to handle their trade through the mails, it worked very nicely until Mr. Neal visited Terre Haute and attended a convention of Mine Operators, on March 27th. It was publicly announced at that meeting that Kings, Ohio, Phoenix and Austin Cos. had been for nearly two months selling the several operators they supply at $1.05 and less per keg. One man mentioned having purchased at 98 cts. No one claimed to have bought Hazard powder at such prices, but Mr. Neal naturally felt indignant that we should be charging him $1.20 and $1.25 per keg when the market had been so low. Dugger & Neal were not the only ones

to complain. I have been hammered from several sources and there is very little for me to say; the statements are true.

While I regret the low prices, we were not at fault in making them. The absence of orders on our files attest the fact that our trade has been sacrificed to people who sell cheaper than we do.

Truly yours,

3344

R. S. Waddell, Agt."

Q. Now, in May, 1893, did you write that letter —those two letters (handing witness paper)? A. Yes, that is my signature.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-73 and A-74.)

Mr. Button: This is to the du Pont Company. "Dear Sirs: I wired you message this a. m. reading: 'Ingle, Evansville, asks one 3345
fifteen price on Feb'y car and May car one ten. Kings quote latter price and have furnished fifty kegs for trial.' Now confirmed.

Jno. Engle & Co. have been dissatisfied with our prices for sometime, but I felt they could not use any but the du Pont brand and we could hold them pretty high in price. Now that they are making efforts to introduce King powder I concluded to wire you.

L. & R. Agent called on David Ingle a brother to Jno., and an old Hazard customer, and quoted $1.05. This caused the trouble.

Truly yours,

R. S. Waddell, Agt."

3346 This one of May 19, 1893, to the Hazard Powder Company.

"Dear Sirs: I have wired you message this date reading: 'Sternbergers are offered Kings, Austin, Miami, Austin, at One Dollar. Do you care to sell two carloads this price, cash.'

And now confirms. The Globe Iron Co. bought from Austin at $1.00, and other lots have been sold at Jackson at this price. I
3347 do not know how you feel on the subject, but conclude to submit the quotation to you. I have not much enthusiasm for the marketing of powder at $1.00 per keg; you may see some good reason for selling it at this price, but it certainly could not be for profit.

Truly yours,

R. S. Waddell, Agt."

3348 Q. That was Jackson, Michigan, was it? A. Jackson, Ohio, that we sold it.

Q. Jackson, Ohio, what? A. We sold it.

Q. Did you make the price? A. Oh, no, I never made a price, the companies made the prices.

Q. Phoenix had made the price, hadn't it? A. At that particular time I presume we met the price.

Q. That was in May, 1893, they had been making these prices, hadn't they, the Phoenix and the Chattanooga, bringing them down during that period? A. It alternated, they would sometimes be below and sometimes above, according to the information that we had.

Q. Did you say it had been below the Phoenix and Chattanooga price at any time up to this date of May, 1893? A. Been there lots of times.

Q. Can you recollect any instance? A. No, I have

no access to the letters, there are lots of them; we were not confessing our own faults.

Q. You were reporting business conditions as they were? A. I was reporting the faults of others, of other people. I didn't confess my own in these letters.

Q. In June, 1893, are these two letters yours (handing witness)? A. These are my signature.

Mr. Button: Mark those.

(Same received in evidence and marked 3350
Defendants' Exhibits A-75 and A-76.)

Mr. Button (reading): "June 7, 1893. The Hazard Powder Company, New York City, N. Y.

Dear Sirs: I received your message and letter confirming same which declined the Dugger & Neal and Norton Creek C. & M. Co. orders at $1.00. I sent Mr. Rood to see if he could induce these people to pay $1.05. I had his reply this morning that he found Dugger & Neal had written an order to 3351
Miami Powder Co. accepting their offer of a carload at $1.00. He intercepted the letter and induced them to take a carload of Hazard at $1.05, or rather permit him to file the order for same.

At Norton Creek he met Mr. Johnston of the L. & R. Co., who had offered N. C. C. & M. Co. at $1.00 per keg. Johnston explained that no one was asking more than $1.00 per keg and that Phoenix had sold at 98 and 99 cents. I give you this as it comes to me. I wired you message this date reading:

'Dugger & Neal and Norton Creek have agreed to pay One Five, although Miami and

Laflin offer One Dollar. Do you want their orders?'
and now confirm.

Truly yours,
R. S. Waddell, Agt."

Q. Those are the ones you testified a moment ago that you accepted, were they not? A. I did not mean that, I didn't mention it.

Q. "I received your message and letter confirming same which declined the Dugger & Neal and
3353 Norton Creek C. & M. Co. orders at $1.00"? A. No, they were not the ones we were talking about. Sternberger, of Jackson, Ohio. That is out in Indiana.

Q. I guess we were talking about Ingals. A. You asked me if it was Jackson, Michigan.

Q. Yes, that is the next preceding one, about Dugger & Neal. Here was a price that you did refuse anyhow, wasn't there? A. Yes, we had been getting $1.20 it seems from those people.

Q. In July, 1893, Mr. Waddell, did you write
3354 these two letters (handing papers to witness)? A. That is my signature.

Mr. Button: Mark it

(Same received in evidence and marked Defendants' Exhibits A-76, A-77 and A-78 and A-77½.)

Mr. Button (reading):

"July 18, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We confirm our message to you this date reading:

'If desirable, we can sell two carloads at

One Dollar, delivered Brazil, Ind., to Crawford and Zeller.'

Crawford Coal Co. bought their last car of Powder at 98 cts., but were dissatisfied with the grain. Mr. Zellor has been paying $1.00. We talked with these parties a day or two ago, and they promised that if we would return and could sell them at $1.00 per keg, they would each give us an order for a carload. I think Mr. Rood will reach 3356
Brazil on Wednesday. Awaiting your reply whether or not the deal is desirable at price named, I remain,

Truly yours,

R. S. Waddell, Agt."

There is another one here dated July 24th, 1893, to the Hazard Powder Company:

"Dear Sirs: Herewith is a letter from Van Camp Hdw. & Iron Co., written by Mr. 3357
Beck, calling attention to cut prices in Indiana, particularly on Blasting powder. This, I think is correct, as we have had several cases where we met a One Ten price f.o.b. Indianapolis, and this would deliver the powder at $1.25. The price is made on Kings, L. & R. and Austin Powder. The Blasting powder handled by Van Camp goes to very small mines and stone quarries.

This is sent to indicate the condition of affairs in Indiana.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

3358 *R. S. Waddell—Cross*

That is in July. To the du Pont Company in September the 22nd, 1893; to the du Pont Company:

"Gentlemen: Herewith we hand you order for a half carload of powder to Grand Rapids. We found Ohio Powder Co. had captured the Gypsum trade at Grand Rapids at $1.10 per keg, but succeeded in getting the mines to take 100 kegs your pow-
3359 der at same price, provided you wish to deliver it. I sold 40 Keg lot at Traverse City, Mich., delivered from Grand Rapids, and as stock is needed in the Magazine, concluded to order a half car to get a low freight rate. Will ship all to Grand Rapids Agents, and they will forward the Traverse City Powder on arrival of car.

Truly yours,

R. S. Waddell, Agt."

3360

That don't seem to have been marked, will you please mark it?

(Same received in evidence and marked Defendants' Exhibit A-79.)

Q. You signed these (handing paper to witness)? A. That is my signature.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-80, A-81 and A-82.)

Mr. Button (reading):

"September 23, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We quoted Zeller & Zigler $1.02 on Blasting Powder delivered at Knightsville or Brazil, Ind., on information from their buyer that this was the lowest price that would 3362
be required. At the same time they received quotations from Ohio Powder Co. naming them 97 cts. cash on delivery. They purchased from the Ohio Powder Co. 1,200 Kegs at 96 cts. I enclose you copies of Mr. Rood's letters. Please wire me Monday if you care to accept these orders at 97 cts., and we will forward by first mail. They read:

'1,200 kegs FF. to Asherville, Ind., 97 cts. on delivery, to reach destination Oct. 1st to 3d. Also 400 Kegs FF. for American Beauty Mine, Asherville, Ind. This is on Vandalia 3363
R. R. near Knightsville, Ind.; same price and terms.'

The entire 1,600 Kegs to be delivered about Oct. 1st to 3d. The first order—1,200 Kegs—is for John H. Zeller Coal Co.; the 400 kegs for Zeller & Zigler. These people are worth about $50,000.00, good credit. We have tried to sell them several times but have over-sized the price on every occasion.

Truly yours,
R. S. Waddell, Agt."

Q. Now, in October, 1893, Mr. Waddell, are those your letters (handing paper to witness)? A. Yes, that is my signature to the first.

3364 *R. S. Waddell—Cross*

Mr. Button: Mark this first one.

(Same received in evidence and marked Defendants' Exhibit A-83 and A-84.)

Q. And those in your hand? A. All except the last are mine by McConaughy, my bookkeeper.

Mr. Button: This one is dated Oct. 24, 1893, to the du Pont Company:

3365 "Dear Sirs: The competition about Louisville has become very close. Herewith is submitted letter Mr. Bannen Coleman, Agt., which explains the situation. I wired you today asking consent to make Baskett Coal Co. $1.10 price. The L. & R., Miami, Kings and Chattanooga have all quoted $1.10 at Kentucky points south of Louisville. The Chattanooga Co. can get into Baskett, Ky., at about 20 cts. per keg. If their Mill price be 85 cts., they can easily deliver at $1.05. I think we could hold their trade at equiva-
3366 lent price with others, but not more.

Please note Mr. Coleman's statement regarding the local trade at Louisville. It is true that nearly all the merchants at Louisville are selling at $1.15 for Blasting Powder in small lots, but they purchase from agencies that have a $1.00 net price, the same as Kings, Miami, L. & R. and Austin have at Cincinnati. Heretofore we have practically abandoned this small lot trade at Cincinnati as well as at Louisville and I do not know your wishes now respecting this. Do you desire to revise the prices for Louisville?

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Mark those please.

(Same received in evidence and marked Defendants' Exhibits A-85, A-86, A-87 and A-89.)

Q. Now are those low prices lower than yours prevailing throughout Kentucky at that time, were not they? A. At that particular date, yes.

Mr. Button (reading):

3368

"Nov. 16, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen: Herewith I hand you copy of letter, Jno. Ingle & Co. Also please read in connection with this, copy inclosed letter of David Ingle to the Hazard Company. It is possible that there might be collusion between these parties, but to day I had a postal from R. McJohnston & Co., with information from two other sources, which indicates that someone has visited that section, quoting a price of $1.00 on powder in carloads. This tallies closely with the latest reports we have had from St. Bernard Coal Co. 3369

I wrote Mr. Ingle that it was no use to discuss a price of $.95 per keg, but that I would advise him the lowest price we could make; if we could not go as low as $1.00, we would write them before shipment. The rate from Moaar to Evansville is 28 cts. per cwt. If 7 cts. per keg, this would net $.93 f.o.b. Mooar, if sold at a dollar. I am uncertain whether this new opposition comes

from Phoenix, Equitable or Chattanooga. It is true that powder in 50 and 100 Keg lots, is sold from Louisville at $1.00 per keg. Chiefly L. & R., Miami and King brands. If you can fill the order at one dollar, please do so; if not, kindly advise the lowest price we can make Ingle.

Truly yours,

3371 2 Enclosures. R. E. Waddell, Agt."

Q. On November 16, 1893, the rumors about the Equitable having been able to compete with the Phoenix had not yet reached you, had they, Mr. Waddell? A. Yes, I think so.

Q. You say here, do you not, "I am uncertain whether this new opposition comes from Phoenix, Equitable or Chattanooga"; at that time did you well understand that the du Pont and Hazards had built the Equitable? A. I knew they had not built it. I was at the Equitable when it was being
3372 built.

Q. Did you know at that time that they had co-operated in building it for the purposes of competing with the Phoenix? A. That was the general belief of the trade.

Q. At the time you wrote this letter? A. Yes.

Q. You knew it then? A. I knew it all the time; the opposition came from all brands.

Mr. Button: On November 25, 1893.
To the du Pont Company.

"Dear Sirs: After a week of negotiation with St. Bernard Coal Co., we have finally closed a contract with them and Madisonville Coal Co. combined for 1894 consump-

tion—16,500 kegs at $1.02 per keg for Sycamore powder."

Q. This is in 1893 and there is one contract for at least a year's supply for a considerable amount, wasn't it? A. For a definite number of kegs, yes.

Mr. Button (reading): "They had a price of $1.00 from Chattanooga and from Phoenix. One other Company quoted $1.02. I declined to make any quotation and while 3374
this put the St. Bernard people in a bad humor, it shut them off from playing us against others. Mr. Rood handled the case very nicely, told them to get their prices and when they were ready we would say whether we would meet the figure or decline the contract. Mr. Gorman, of St. Louis, was present representing the Phoenix Co., and the Chattanooga Co. were represented by their secretary. The St. Bernard Co. felt a little sore over having lost $1,000.00 on their last year's contract. They claim that within ten 3375
days after signing with us they could have bought powder at $1.10. They kept their contract and paid $1.20; 10 cts. per keg above the market, say on 10,000 kegs. I hold the written contract at $1.02, being 15,000 kegs for the St. Bernard mines, and 1,500 kegs for the Madisonville mines. If you will wire your approval Monday, I will execute the papers and forward them at once, closing the deal. While this was pending Crabtree Coal & Mining Co., of which Mr. Salmon, who is brother-in-law of Mr. Rash, is manager, bought a carload of Chattanooga powder at $1.00 per keg. We knew of this purchase but as we held a carload

order from Crabtree conditioned on our meeting the price and this order had not been finally cancelled, we claimed to be holding the Crabtree trade.

The freight on powder from Phoenix mills to Evansville is 22 cts. per cwt.—5½ cts. per keg. John Ingle was correct in his statement that Blasting Powder was offered him at 95 cts. The L. & R. Co. sold one carload at 95 cts. per keg, delivered at Koester Coal
3377 Co. at Evansville. This was sold in competition with Phoenix.

We are informed that the Phoenix St. Louis mills will start up again next week.

Truly yours,

R. S. Waddell, Agt."

Q. So you had a contract the previous year also, did you not, which you were renewing? A. Not a yearly contract, not a rebate contract. We had a contract which was for so many kegs.

3378 Q. I asked you if you had a contract? A. For a definite number of kegs, yes; it was a good one, that is, it was good in law.

Q. You mean by that that these other contracts were not good in law? A. That is my judgment of them, yes; that was Mr. Hillies' judgment.

Q. Your judgment as a lawyer or powder man? A. Just as a business man.

Q. Just as a business man. A. I have also had the opinion of learned counsel on that question.

Q. In December, 1893, are those your letters (handing papers to witness)? A. Yes.

Mr. Button: Mark them, please.

(Same received in evidence and marked Defendants' Exhibits A-90, A-91, A-92, A-93, A-94.)

Mr. Button (reading):

"Dec. 11, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: I had a letter from F. T. Gunther, Owensboro (copy enclosed). I have replied to Mr. Gunther that we met the market when we sold him the last carload of powder; that we have not since sold any du Pont Powder at Owensboro for less than the price we then made him—$1.10 per keg, and that we could not rebate on the last car. 3380

As to the price of the car now ordered. I said that the best price we could name him would be $1.05 per keg delivered at Owensboro. Mr. Gunther is not a very energetic seller of powder, and I believe will be willing to pay $1.05 per keg.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

3381

Q. You haven't any doubt that in December, 1893, that Chattanooga Company had gone into the Owensboro, or the Phoenix, and cut under your price about 10 or 15 cents, Mr. Waddell? A. They may have gone under Gunther; he was a very loyal agent of the du Ponts.

Mr. Button (reading):

"December 14, 1893.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Referring to our order No. 157 dated 11th inst., Mr. L. M. Baird writes asking the privilege of changing the assort-

3382 *R. S. Waddell—Cross*

ment. Instead of that already ordered, please send him: 100/F, 250/FF, 50/FFF, 300/C, 300/CC. The order is marked for shipment Jan. 1st.

Mr. Baird reports that the Chattanooga Powder Co. have offered Blasting in 400 keg lots at 95 cts. delivered at Evansville. He saw their offer at this price to Diamond Coal Co. He does not think they sold any powder at Evansville.

3383

Truly yours,

R. S. Waddell, Agt."

Q. Now, none of the other companies had made any 95-cent price at that time, had they, Mr. Waddell? A. I don't know.

Q. Don't you know they hadn't? A. No.

Q. Can you take that letter of your own and state whether that was not a new price as low as 95 cents made by the Chattanooga in that territory? A. Well, I don't know what the other prices were; we just learned them from day to day as we got them. I could not tell you on that date whether the other people had made a price that low or not. Chattanooga was driven out of her local territory down in Chattanooga and Tennessee and was seeking better prices outside.

3384

Q. You knew all about the situation at that day, both from your correspondence and also from the local conditions around Chattanooga, did you, which you stated you learned from your brother? A. Well, I might not have known it within a week or two weeks in the exchange of ideas.

Q. In the month of January, 1894, is that first one your signature (handing witness paper)? A. Yes, sir.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-95 and A-96.)

Q. You might as well look at these others here. Are these also yours (handing papers to witness)? A. All of them bear my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-97 to and including 3386 A-102.)

Mr. Button (reading):

"Jan. 22, 1894.

The Hazard Powder Co.,
New York City.

Gentlemen:

Herewith please find a letter from Mr. J. Smith Talley, President, Chicago & Indiana 3387 Black Coal Co., which explains itself. Mr. Talley has been using other brands at $.95 per Keg, but now expresses a wish to continue the use of Hazard powder, provided we will make him a price of $1.00. This Powder is for the C. & I. B. C. Co.

I also have an order for a car of powder from David Ingle, Ayrshire, Ind., provided we can furnish Hazard at $1.00 per keg, net, cash on delivery. We supplied David Ingle with a car du Pont Blasting, but the grain does not suit his Miners, and they rebelled. They have been buying Phoenix lately, and are now willing to take of us at the price named.

3388 *R. S. Waddell—Cross*

I expect to write you fully tomorrow in reply to yours inquiring the condition of the Blasting Trade. We are out of the market on Hazard brand. There are a few good customers who would like to stay with us, and the two named in this letter are among our best.

Please wire on receipt of this, whether you can receive the orders, and if so, send Chi-
3389 cago & Ind. Block Coal Co. 400 Kegs of F., and David Ingle, Ayrshire, Ind., 800 Kegs of F.

I will send you formal orders for same on receipt of your telegram.

Yours truly,

1 Enclosure. R. S. Waddell, Agt."

Q. Now you were out of the market on the Hazard brand in January 22, 1894. Do you mean to
3390 say, Mr. Waddell, in that letter, that you meant to say you were simply out of the market on that one day? A. Yes.

Q. You meant that? A. We had that trade, both of those gentlemen when the fight ended.

Q. I know that. But you say here: "We are out of the market on Hazard brand." You meant by that statement, didn't you, that the prices had been cut so low during the last year or two that you had lost all of your trade? A. Oh, no.

Q. Didn't mean that? A. No.

Q. You simply meant on that one day you were out of that market? A. Yes, for that particular time; I was selling 150,000 kegs a year.

Q. You say "by that trade"; what did you mean "by that trade"? A. Those particular people.

Q. Yes, but the language is, "I expect to write you fully tomorrow in reply to yours inquiring the condition of the Blasting Trade. We are out of the market on Hazard brand. There are a few good customers who would like to stay with us and the two named in this letter are among our best." A. Yes.

Q. That is your trade would like to stay, but you are out of the trade, having lost it. A. Our price at that date was a little high, we were probably in it the next day on a telegram. 3392

Q. Probably what? A. Probably in the market the next day on a telegram as we got them again after that.

Mr. Button (reading):

"Jan. 22, 1894.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: 3393

Yours 17th inst. received mentioning purchase by Messrs. Ross, Brown & McCrey, Brazil, Ind., 1,600 kegs Blasting Powder which they are offering at $1.00 in small lots and 90 cts. in lots of 400 kegs. We have never sold any Powder to this firm. They buy L. & R., Kings and Ohio. I am quite sure they have not received any du Pont or Oriental powder through this office or sub-agencies. Ohio Powder Co., Miami, Kings, Austin and Phoenix have quoted powder in the Terre Haute district as low as 90 cts. per keg for cash. The usual quotation has been $1.00 less 5% or 7% for cash. Two

3394 *R. S. Waddell—Cross*

or three of our customers have been named 10% for cash from a One Dollar price. I have not heard any complaints from our trade of the sales made by Messrs. Ross, Brown & McCrey; although we have customers in that immediate locality who are very prompt in advising us of prices below that which we are charging them.

I think if the $1.00 price is to be cut, the way to do it is in the shape of a cash dis-
3395 count. I will ask Mr. Rood to investigate the Brazil report when he passes through that city the latter part of this week, or the first of next week.

Truly yours,

R. S. Waddell, Agt."

Q. The dollar price you refer to was the one you had been maintaining theretofore for the du Pont and Hazard, was it not? A. If that is what it
3396 states.

Q. It does not mean merely the day before, it means the year before, doesn't it, Mr. Waddell? A. No, I had been up beyond that up to $1.30 and $1.40 in the year before.

Q. Had been above, you never had been below the $1.00 before that time? A. No, we were on the down grade.

Q. That 90 cents rate was made by your four associates, the Ohio, Miami, King and Austin and the Phoenix, all members of the association, were not they? A. Yes.

Q. And they cut the price ten cents? A. There is about twelve in the association and it was twelve against one.

Q. That is against the Hazard? A. No, against the Independent.

Q. Oh. A. We were all in that, no one was doing all the cutting.

Q. That is the harmonious fight, one unit against the three independents that you mentioned, is it? A. Yes; my files at Cincinnati was full of the correspondence cautioning me against associates.

Q. Now, on January 24, 1894, you wrote as follows to the Hazard Powder Company:

3398

"Gentlemen: Reporting on the general condition of our Blasting Trade, enjoyed by the Hazard Powder Co., I give you herewith, in tabulated form, a list of our old customers, the name of the brand they are now buying, and the price they pay for powder.

Your prices to us are, for Indiana Coal Field, minimum, $1.05, Jackson, Ohio and Ironton, Ohio,—$1.00, other Ohio points, $1.05. West Virginia, minimum $1.05, excepting Norfolk & Western Trade, which is $1.10, and if anything below this is required, on consultation there is a possibility that you might allow $1.05; permission, however, is not given for this price. 3399

In Interior Kentucky, $1.12½; Central City District, $1.10, Ohio River points, $1.05.

Our customers have been very reluctant about quitting the use of Hazard Powder, have clung to us at an advance of from five to fifteen cents per keg higher than they were quoted by three or four competitors, and most of them feel aggrieved that we have not treated them more generously. Knowing that you were indisposed toward making a lower price than that already

given me for the different Districts, I have not been very urgent in letters on the subject. We have, during the year, taken orders for about forty three carloads to be shipped within thirty days after date of the order, which have been countermanded or delayed, and cancelled at a later date; for the reason that we could not meet the price which our competitors had made, the Trade drifted from us;—some of it permanently,
3401 but other customers will return whenever the conditions are favorable for us to care for their wants. I have endeavored to avoid disagreeable wranglings and ill-feeling with customers, expressing the regret that excessive freights and low prices precluded us from enjoying their trade.

I also send you separate sheet showing consumers who have Blasting powder, (Hazard brand) on hand, and who would probably ask a rebate should we quote them
3402 a lower price. Our rule has been to make no quotation until the party was in the market for a new carload, and then to except Stock on hand when the new quotations were issued. The fact is we have done a conservative business, and have not, in a single case, been sufficiently aggressive to solicit an order. We have known that our prices were from five to fifteen cents above the market, and it would injure us more than any good we could gain, by actively soliciting trade. As you will observe by our orders, we have had two or three different prices in every locality; this is due to the fact that we have got the most we could from people who had lower prices from

other Companies, and were willing to give us the figures named on our orders. We can do a moderate share of the business with a One Dollar price to all Indiana, Ohio and Kanawha District points; One Dollar to One Five for Norfolk & Western Trade; $1.05 in Central City, Ky. District, and $1.00 at Ohio River points such as Owensboro and Evansville. About half of our sales on Kanawha and Norfolk & Western, would be at $1.05, and exceptionally close buyers, at 3404
$1.00.

The unusually mild winter throughout the Central States has cut down the consumption of coal fully 50% for heating purposes, and the reduced demand from manufactories, has cut off the carload trade in coal, more than 50%, so that the limited amount taken for fuel and manufacturing reduces the output of the mines below anything that has been known during my experience in the powder business. This has reduced the consumption of powder very 3405
materially, and at the same time has aggravated the cutting because every company has fancied it was losing trade, or desired more, attributed the loss to their high prices, and accordingly made a cut.

Kings, Miami, Austin, Ohio & Phoenix Companies have sold in our territory at prices ranging from 90 cents to one dollar. I am informed the L. & R. Company have placed some powder in Indiana as low as 90 cents, but I have not had an opportunity to confirm this report, and it may be an error.

You understand very well, that the lowest prices capture the cream of the trade;

at high figures, we take the buyers of doubtful credit, who are slow in paying. If there are any points omitted that will interest you, I will be pleased to furnish them.

Truly yours,

R. S. Waddell, Agt.

P. S. I could not get the second state-
3407 ment ready for today's mail, and rather than delay this, I forward without it and will send the other later."

Q. Is that a report about a one day's condition, Mr. Waddell? A. No, it seems to be more general.

Q. It seems to indicate that theretofore your prices consistently had been from five to fifteen cents above all others, or many others? A. Well, the rate of freight from Hazardville was sixty-five cents a hundred or sixteen cents a keg, and they couldn't always compete; they didn't want to
3408 lose.

Q. But as I have understood you very recently within the last half an hour, you thought that this is only one side of the story, that frequently in answer to these requests for prices you got telegrams from the Hazard Powder Company to cut under these other people and hold their trade, didn't you say that within half an hour? A. Yes, very frequently.

Q. But here the prices were ninety cents by most of these companies and you hadn't been down below $1.05, had you, according to this report? A. We went down to eighty cents right in that field.

Q. I know, but up to this date had you been down below $1.05, Mr. Waddell? A. I don't know.

Q. Then you hadn't had any such telegrams ask-

ing you to cut down below ninety cents, had you, at this date? A. No, this was probably the pool.

Q. Won't you look at the report that is enclosed (handing paper to witness) and see if that doesn't correctly reflect the state of your business at that date and whether those are the people that had gotten your businss away from you and what prices they had gotten it at; that statement gives the name of the customer, doesn't it? A. Yes.

Q. Where is he located? A. And the powder company of whom he bought his last carload. 3410

Q. Yes, and the powder he is now using, the price he is getting for it, what price has been to them and general remarks. A. Yes. That applies to that date.

Q. And it shows quite a substantial list of your customers that were then being furnished by the Miami, Hazard, Ohio, Kings, Laflin & Rand and everybody else, doesn't it? A. Hazard was competing with du Pont and du Pont only, they all competed with each other.

Q. Then we really had a normal condition at that time? A. No, we didn't. 3411

Q. On February 19, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-103.)

Mr. Button (reading):

"Cincinnati, Feb. 19, 94.

Messrs. E. I. du Pont de Nemours Co.,
Wilmington, Del.

Dear Sirs:

Enclosed herewith I hand you letter re-

ceived from our Louisville Agt. Mr. Coleman apprehends a further loss of trade by the introduction of Austin powder in the Louisville market. I think there is good cause for his expecting this, for the Austin Co., selling Blasting in small lots at $1.00 per keg and this is a sufficient influence to turn trade in their favor on Sporting powder. They have captured considerable Hazard trade in this City and at such towns as
3413 Waverly, Chillicothe, Hillsboro, Washington and other towns in Ohio and Indiana by selling them small lots of Blasting at $1.00 as an inducement for a stated quantity of Rifle. If this practice is sustained at Louisville they will take a full share of Mr. Coleman's trade.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Cutting went on then by these associates during 1894, didn't it? A. Yes, until the Austin
3414 filed charges against me that I had eighty-five per cent of the trade in Cincinnati.

Q. When was that? A. That was when the round-up came.

Q. In 1896; did you write this letter (handing witness paper)? A. That is my signature.

(Letter received in evidence as Defendant's Exhibit A-104.)

Mr. Button (reading):

"Cincinnati, March 15/94.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of a letter from Mr. Rood. I had him call at Zanes-

ville in reply to an inquiry from the Harper & Cosgrove Co. There is no doubt that the Austin and Ohio Powder Cos. are selling at 90 cents. I refused to give Mr. Rood a 95 cts. price because I feared they might have a stock on hand and if this price was quoted them, they would make a new order conditional on our allowing a rebate on the old stock. If the freight to Zanesville were $50.00 per car, on the old basis, it should not now exceed $37.00 on the revised freight 3416
tariff, provided the powder is shipped in cars of 800 kegs or over. I can arrange to have the Blasting increased to 800 kegs; ship the car to Zanesville with the privilege of switching it at Cambridge, O., where we could take out 400 kegs for Byesville. The freight on the powder from Cambrdge to Byesville would be very light, as the distance is only about six miles. I mention this to enable you to figure what the powder will net you at the mills.

Regarding the price of Rifle—$2.75 net. 3417
This is more than the Austin Co. charges at other points. They recently quoted Wagner & Son, Mansfield, O., at $2.25 per keg, and Mr. Wagner states that he can buy it at this price now.

I will not send formal orders for the powder until I hear whether they will be accepted by you.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Did you write this letter (handing paper to witness)? A. That is my signature.

3418 *R. S. Waddell—Cross*

(Letter received in evidence and marked Defendant's Exhibit A-105.)

Mr. Button (reading):

"Cincinnati, March 24/94.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

3419

We sent Mr. Rood into the Norfolk & Western district last week and while there he met Mr. Sherman of the Chattanooga Powder Co. Mr. Sherman was endeavoring to sell powder at $1.00 per keg and was in a fair way to take a good many orders. He had called on most of the trade soliciting orders and promised to see them to confirm the deal before he left the Valley. To meet this, Mr. Rood took written orders from:

3420

Louisville Coal & Coke Co., Goodwill, West Va., 400 kegs Hazard Blasting at $1.00 to be delivered May 1st. This Co. had King's quotation made by Mr. French at 98 cts.

A written order from Algoma Coal & Coke Co., Algoma, West Va., 400 kegs duPont Blasting at 99 cts., for delivery June 1st.

Lick Branch Colliery Company 400 kegs duPont to be shipped May 1st, at $1.00.

Shawnee Coal & Coke Co., 800 kegs duPont Blasting at 00 cts., to be shipped about May 15th.

Mr. Sherman sold Keystone C & C Co., a late customer of Kings, 400 kegs at 87 cts.

Tidewater C & C Co., a Phoenix customer at 97 cts.

Gilliam Coal Co., 400 kegs at 98 cts., this was a late customer of Kings.

Pulaski Coal Co., undertook to get up a competition in price between Sherman and Rood, and their order was left open. They prefer duPont powder and I believe we will get the order at 99 cts., even if Mr. Sherman should quote them 95 cts—as they expected he would. 3422

In addition to the above Mr. Sherman quoted Crozier Coal Co., 97 cents., Algoma, 98c., Shamokin, 97 cts., Shawnee, 98 cts. Mr. Rood is not certain of the price he made on the Tidewater car, but was told that it was less than 98 cts. Not hearing of a better figure than 97 cts., he concluded he sold at this price. Our orders aggregate 2,000 kegs; Sherman's 1200. The trade that Mr. Sherman gained was from Kings and Phoenix. He told several parties, for whom he made figures, that his freight rate into that section was $1.08 per cwt. At 97 cts. he is therefore figuring on 70 cts net at the mills. 3423

The Hazard Company do not want to sell below $1.05 and we tried to get the Louisville Company to take your powder. Their miners prefer the Hazard grain and if they cannot obtain this will take Chattanooga, which closely resembles it. Mr. Rood thought best to get the order and discuss it later. I will send copy of this letter to Mr. Colvin President which fully explains the situation. If it is decided to accept these orders which are written and signed by the purchasers please advise and I will write formal acceptances.

3424 We do not intend to visit N & W trade until April, as we knew they did not need powder, but hearing of Mr. Sherman's visit I started Mr. Rood. They met at the hotel and slept in the same room. Sherman said that some of the powder companies were in a tolerably close place; that Mr. Conable, Prest of Chattanooga is acquainted with several banks in Ohio where they received some accommodations and he knew that the

3425 King Co., had worked the banks of Xenia, Springfield, Dayton and Columbus, for all the money they could get. He (Sherman) thought the King Co. were closer run than anybody in the business. Rood express the wish that Sherman had allowed him an opportunity to go into the business when organizing Chattanooga Company. Sherman said it was not too late now, that there was plenty of stock to be had on a very fair basis. Rood had made other arrangements

3426 and was not in shape to take any. Returning from this trip Mr. Rood met French—a salesman of the King Company. Mr. French said Messrs. Peters were greatly disheartened—the low prices and the deplorable condition of the business had discouraged them. Then they realized that every powder company in the country was making a drive at the Kings and they were the chief sufferers in this whole fight. Rood got the impression that if French in any way reflected the sentiment of Mr. Peters, that things were in a very bad shape with them.

Truly yours,

R. S. Waddell, Agt."

Q. So you were also making a fight against the King Company at that time, were you, Mr. Waddell? A. They were participating.

Q. Well, they were participating at the other end; they were in the class with the Chattanooga and the Phoenix, weren't they, according to this letter? A. No, they were members of the pool.

Q. The pool wasn't very profitable in those days, was it, Mr. Waddell? A. Not in that particular district; it was outside.

3428 Q. What were the dividends of the duPont company that year? A. I don't know; I knew the dividends of the Hazard for many years; they ran about $325,000.

Q. What were the dividends of the Hazard Powder Company in 1894? A. I don't recollect; I have had them—all of them.

Q. April 18, 1894, did you write these letters (handing papers to witness)? A. Yes.

(Papers offered in evidence and marked Defendant's Exhibits A 106 and A 107.)

3429

Mr. Button (reading):

"Cincinnati, April 2/94.

Messrs. E. I. duPont de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of a letter sent to me by the Weakley, Worman Co., Dayton, Ohio, who asked for better prices. It is an indication of what the Miami and King people are doing at Jackson, Ohio. French, of the firm making the quotation,

3430 *R. S. Waddell—Cross*

was formerly Miami agent. The firm now handles about equal quantities Miami and King powder. Their quotation of fifty keg lots at $1.00 is quite an embarrassment to us in the sale of carloads of 800 or 1,000 kegs at this price. The Weakley, Worman Company asked that we return the original letter.

Truly yours,
R. S. Waddell, Agt."

3431 Q. Now, it has always been the practice to make a trifle higher price for small lots, like fifty kegs and for carloads, hasn't it? A. About fifteen cents a keg difference.

Q. Therefore this $1.00 price at that place for a small lot of fifty kegs was a very low price, wasn't it? A. Yes; a man probably bought a carload and was selling it out.

Q. Well, was it a low price? A. Yes, it was a low price, I should think.

3432 Q. Now the same month, April 2d, 1894, did you write this letter? A. Yes, that is my signature.

(Letter received in evidence and marked Defendant's Exhibit A 108.)

Mr. Button (reading):

"Cincinnati, April 2/94

Messrs. E. I. duPont de Nemours & Company,
Wilmington, Del.

Dear Sir:

Mr. Dawes President St. Louis & Big Muddy Coal Company returned to-day and

I had an interview with him regarding future supplies. I asked what the chances were for his trade in the future provided we could bring about an adjustment on the two carloads at $1.00 delivered to them last fall. He said they would not want to break off entirely with Kings at once. Kings are selling him at 95 cts.—a price that was given by L. & R. They just received a car from the King Company but are using 3434
about 1,000 kegs per month. He offered me a car load for May delivery at 95 cts. I told him we would consider the proposition, but if we could have any sort of an assurance that there was to be permanency in the trade and I could write you to this effect, that I thought the deal would go through. He told me to write you that the miners as well as the company preferred duPont powder; that he could say now that we would have the principal part of their trade and that chances were favorable that 3435
the miners if given an opportunity would in time take duPont powder alone. I promised to let him know in a week or ten days whether we could accept his order for the 1,000 kegs at 95 cts.

Truly yours,

R. S. Waddell, Agt."

Q. There the King was cutting your price of five cents under a dollar, weren't they, for that trade in April, 1894? A. He owed me forty-two carloads—a couple of thousand dollars probably—and I couldn't afford to quote him a price without cutting the price on past sales.

3436 *R. S. Waddell—Cross*

Q. Very well, but the King was cutting your price, wasn't it? A. Yes.

Q. Did you write this letter, April 8, 1894 (handing witness letter)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-109.)

Mr. Button (reading):

"Cincinnati, April 28th, 1894.

3437

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Gentlemen:

Herewith I hand you letter from Ruffner Bros., Charleston, West Virginia, asking quotation on a carload blasting powder delivered at Charleston. I think King's have sold two or three carloads in Kanawha Valley at 90 cts. The Phoenix Company have
3438 also sold two or three carloads at 90 and 95 cts. Our best price in that Valley has been $1.00. We have asked agents the same figures that we named consumers. Messrs. Ruffner Bros. have been very gentlemanly and fair with us. They recognize that powder is sold at a loss, know that we quote the trade the same figure we give them, and they aid us by furnishing information. If you desire to make any change in price on a carload of powder to Ruffner Bros. please wire me on receipt of this letter.

Truly yours,

1 Enclosure. R. S. Waddell, Agt."

Q. Now, that is over in the Pocahontas district, isn't it, Mr. Waddell? A. No, that is at Charleston, West Virginia; they were our agents there—du Pont agents.

Q. Well, this shows that King was selling at ninety cents, the Phoenix at ninety-five in that valley, and your best price had been a dollar, hadn't it? A. That is King——

Q. No, "Our best price in that valley has been $1.00"? A. I only had one customer.

Q. Then so far as that valley goes, you hadn't 3440
received up to April 28th, 1894, any of these telegraphic communications to see-saw on the price and get under these other people, had you? A. No, but we did go down to eighty cents.

Q. We may get to that point some time, Mr. Waddell. In May, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-110.)

Mr. Button (reading): 3441

"Cincinnati, May 28th, 1894.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs:

On January 31st we shipped a carload of powder to Collins Colliery Company, Glen Jeans, West Va., which we sold to them at $1.04 per keg without any conditions or guaranty. Mr. Collins, President of this company, is the manager of Louisville Coal & Coke Co., located in the Pocahontas dis-

3442 *R. S. Waddell—Cross*

trict; Collins Co. being located in the New River district. They made us a payment on account sending a remittance for 31 kegs at $1.04, and the remainder of the remittance at $1.00 per keg. We returned the papers saying to them: 'We do not understand why you remit for powder at $1.00 per keg when the price at which it was sold to you is $1.04. We return herewith the entire remittance and ask that you will please correct it.'

3443 In reply to this I have Mr. Collins' letter as per copy enclosed. I have not indulged in the practice of changing prices after a carload is sold, although some of our competitors make rebates—notably the King Company. Before taking final action in this matter I thought it best to consult you. The reduction is probably made by Kings as they did to regain the trade. They no doubt have a small quantity of King powder on hand or may have owed them a small balance and

3444 they rebated this to recover the customer.

Truly yours,

R. S. Waddell, Agt."

Q. Now that was in the Pocahontas district was it, Mr. Waddell? A. No, that was in the New River district.

Q. Glen Jeans, West Virginia? A. Well, on the New River.

Q. Well, the trade was with Mr. Collins, who was president and manager of the Louisville Coal & Coke Company, which is located in the Pocahontas district? A. That was over in the other coal field.

Q. Well, but the same men were—you were sell-

ing them at that time powder at $1.04, and the Kings came in there and cut down to a dollar in that trade in that valley, didn't they? A. That is kind of a problem I put up; I figured it out that way.

Q. July, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-111.)

Mr. Button (reading): 3446

"Cincinnati, July 14, 1894.

The Hazard Powder Company,
New York City.

Gentlemen:

Replying to yours of the 9th inst., Joe Martin of Parke County Coal Company sent an open order for a carload of powder, and knowing that he required it promptly I sent 3447
the order to you. Meanwhile we have been at work fixing the price. Mr. Martin has been quoted L. & R., Austin, Miami, Kings and Phoenix powders at 90 cts. We told him we could not sell Hazard at that price. He has consented to pay us 95 cts. on this carload. If this is satisfactory to you, please ship promptly.

The strike has about collapsed; only occasional mutterings at some points; but I think the trouble will be over before the car reaches our territory. United States Judge Taft locked Phelan, Strike Manager of Cincinnati in the Warren County jail for six months. No appeal to Cleveland. He is

about due to flop over, and may pardon the fellow. If they could hold Phelan, it will be difficult to fill the position he occupied.

Truly yours,

R. S. Waddell, Agt."

Q. Now that indicates although the Laflin & Rand, the Austin, the Miami and the Kings and the
3449 Phoenix was selling powder freely at ninety cents, the Hazard at that date had never gotten below ninety-five cents, doesn't it, Mr. Waddell? A. Just at that date, yes.

Q. Now, August, 1894, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-112.)

Mr. Button (reading):

3450 "Cincinnati, August 10, 1894.

The Hazard Powder Company,
New York City, New York.

Dear Sirs:

Spencer and Hazelton, New Straitsville, O., wire Ohio Powder Company is endeavoring to take their trade at 95 cts., and asks if we can meet the price. There is no particular haste and I have opportunity to get a message from you Monday—therefore write before making reply. I know of sales made at 90 cts. in this immediate locality and there is no question but the quotation is cor-

rectly reported. Please wire me Monday morning if I shall protect the trade on carload order mailed you yesterday. I shall not concede the price unless fully satisfied after investigation that the miners will leave us.

Truly yours,

R. S. Waddell, Agt."

3452 Q. And in September this one (handing paper to witness)? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-113.)

Q. The Ohio Powder Company was competing up there, was it? A. Yes.

Q. And the next month, September 14th, 1894—

Mr. Button (reading):

3453 "Cincinnati, Sept. 14/94.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs:

Frank Owens Hardware Company of Maysville, Ky., wanted some blasting powder and Mr. Owens called to see us about prices. He claimed that they could not buy Rifle powder from us on account of the price and that we were overcharging them on Blasting powder—$1.00 per keg f.o.b., Cincinnati, was our price on their last lot. I suggested that they purchase a carload (400

kegs) either alone or in connection with other dealers at Mayesville or Ashland. I promised to have Mr. Rood call and they were to canvass the subject in the meantime. They discovered that Austin Company is selling in small lots to some of their customers at $2.75 f.o.b. Cincinnati. Our price to them was $2.92½ on 50 kegs Rifle subject to 2% for cash. They would get free delivery in a carload shipment. Mr. Rood was
3455 unable to sell them for they said they would not pay more than $3.25 less 10% and 5% for 100 kegs Sproting. If this were conceded they would take 100 kegs Blasting at $1.00 as a part of a 400 keg car to be shipped via Mayesville to any point we might designate beyond that City.

Mr. Rood stopped at Catlettsburg to see Hazard's customer Ben Williamson & Co. They wanted to buy 100 kegs Sporting and 400 kegs Blasting. Mr. Williamson states
3456 that he paid $2.65 per keg for Sporting and 90 cts. per keg for Blasting, but he is now offering the same price on Sporting and 85 cts. cash for Blasting. He has been buying Austin and Miami powder but we do not know which company sold him at this figure. Mr. Williamson prefers Hazard powder and I had the opportunity to sell him the last car, but our price was too high. Our competitors are undoubtedly placing some good lots of powder at cut prices. Whether it is better to suffer this loss than to force them lower, is for your decision. Our experience has been that if we openly meet the price they would make a lower one. In how far the prices could be equalled in a quiet

way—I cannot say. It is the season when Sporting powder is being placed and there are very few liberal buyers; most of our orders are for lots of 1 to 4 kegs. The cutting seems to be pretty general, for we find it extends through Indiana, Ohio, Kentucky, and into West Virginia.

Truly yours,
R. S. Waddell, Agt."

3458

Q. From that letter in September, 1894, you would not say that the du Pont Company had only made prices, Mr. Waddell; you state here: "Our experience has been that if we openly meet prices the price they make would be a lower one"; is that what had been occurring, had they been making lower prices and you coming down to meet them, and now you are saying it does no good? A. We met them and sometimes went below; they seesawed on the prices; no one had a cinch on the trade.

3459

Q. Now in December of that year, that month, eighteen ninety four, did you write this letter? A. That is my signature.

(Letter received in evidence and marked Defendant's Exhibit A-114.)

Mr. Button (reading):

"Cincinnati, Dec. 17/94.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Mr. Rood just returned from the Norfolk and Western Coal district. About ten days ago he met Mr. French, salesman for King

Powder Co., on a train near Cincinnati. Mr. French told him that they had withdrawn from the N. & W. coal field and that he had turned over the trade to Mr. Day, salesman for the Phoenix Co. We did not attribute much force to this statement, but on this trip Mr. Rood found that Mr. French of the King Company accompanied by Mr. Day of the Phoenix had traveled through the Valley calling upon all the customers. Mr.
3461 French had said to the operators that the King Co. had withdrawn from the Valley at anything below $1.00 net for Blasting powder; that he could not sell below this price, but that he had brought with him a man who could sell for less than $1.00 and he had the greatest pleasure of introducing Mr. Day. He vouched for the good quality of the Phoenix powder and felt sure the customers would receive courteous treatment from Mr. Day and his company. He sold two or three carloads. I had an order from
3462 the Indian Creek Coal Company for future shipment at 95 cts. They countermanded this and took a car of Phoenix powder because they obtained it for a less price. This seems a remarkable proceeding on the part of the King Powder Company and I am at a loss to understand why they should so earnestly wish the success of the Phoenix. If it was a personal grievance of Mr. French, he exposes his company to unfavorable criticism by such generous action toward our rankest competitors. It seems improbable that the managers of King Powder Co. have 'experienced a change of heart' toward the Phoenix people, who are said to be largely responsible for the present condition of the

powder market. As Mr. French confessed—and his actions confirm all that I have said, there can be no doubt of the question. The freight to Vivian on car Phoenix powder is $59.00. On car du Pont powder $91.25.

Truly yours,

R. S. Waddell, Agt."

Q. Is it true that the Phoenix people were large- 3464
ly responsible for the condition of the powder trade at that time? A. Yes, I think if the Phoenix hadn't been built we would not have had any disturbance.

Q. And then the King Company was one of the people who were fighting the Phoenix as a unit in December, 1894, when Mr. French of the King Company and Mr. Day went through the valley and Mr. French introduced Day and turned his trade over to them, wasn't it? A. Well, it looked like they were getting together at that time.

Q. Phoenix would rather have beaten the King 3465
out of that valley at that date, wouldn't it? A. They had the advantage of King over the freight.

Q. Now on January, 1895, did you write this letter? A. That is my signature.

(Paper received in evidence as Defendant's Exhibit A-115.)

Q. And in February this one (handing letters to witness)? A. That is my signature.

(Papers received in evidence and marked Exhibits A-116, A-117 and A-118.)

3466 *R. S. Waddell—Cross*

"Cincinnati, Feb. 23/95.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of letter from Messrs. Thomas Henderson, Ashland, Ky., with copy of our reply. The Phoenix, L. &
3467 R. and some other companies have made an 85 ct. price net cash to four or five parties at Terre Haute and Brazil, Indiana. Two or three firms have purchased at 87 cts., sixty days, or 85 cts. cash. We have heard of this quotation in the neighborhood of the Phoenix Huntington Mills, which are only 5 or 6 miles from Ashland and I presume Henderson & Son have this quotation as they are cash buyers. Please wire me Monday.

Truly yours,

3468

2 Enclosures. R. S. Waddell, Agt."

Q. Now do you mean to say that you would put your price down to eighty-five cents voluntarily for du Pont Company in January, 1895, Mr. Waddell? A. No.

Q. At any time? A. We didn't put it down voluntarily.

Q. Well, had you at all up to that date? A. Oh, yes.

Q. When? A. The time we started at $1.48; we didn't have to sell below $1.48; we didn't have to conduct the fight against Phoenix.

Q. You mean by that that if you had stuck to your price of $1.48 in 1891 you would have given

up the trade? A. We would have given Phoenix a small share of the business.

Q. An ever increasing share, wouldn't you? A. How is that?

Q. An ever increasing share, wouldn't you? A. No, not necessarily.

Q. They had three mills, didn't they, one in New Jersey, and one in West Virginia, and one in Illinois? A. Yes, wholly distinct—distinct territories.

Q. Yes, but a very large territory was covered by 3470
those three mills? A. Yes, but they were small plants and didn't amount to much.

Q. Well, then, the killing off of those three plants didn't have much effect on the trade, they were unimportant? A. The plant at Kanawha, West Virginia, was a trivial thing, it didn't make very much powder.

Q. It was an important matter and they were killed off, as you say they were, and it had its effect on the trade? A. It was important to those who were learning the business of the competitor, 3471
that is all.

Q. Didn't have much effect on the trade though? A. Yes, after it was over they had the mills and they also had the trade.

Q. They had no importance, however; they were important enough to force the price down from $1.48 to eighty-five cents, were they not? A. No, they couldn't have forced it down unless the associated companies had joined in the fight.

Q. That is, if the associated companies had given up their trade, as you say, it probably wouldn't have gone there, but they would have had the trade, isn't that what you mean? A. If the associated companies had allowed an independent to live, allowed them a fair share of the business, a small

share of it, of the growing business of the country, they wouldn't have had this fight; but it wasn't the policy of the associated companies in any of the fights; they want to rule or ruin it.

Q. That is, if they had allowed these three mills of the Phoenix to cut their prices as they did and get enough to take up the capacity of those three mills, the Phoenix would have been satisfied undoubtedly. Also if they had done the same with the Chattanooga you think the Chattanooga would
3473 have been satisfied likewise, wouldn't it and the Southern? A. The Southern didn't amount to much. Yes, I think so.

Q. Well, you have enlarged on it in the various testimony you have given in these cases, haven't you? A. No, the Southern was a very trivial affair.

Q. Well, supposing they had allowed the Chattanooga to cut the price down there in Tennessee and had maintained their own price, Chattanooga would have been selling its full output, wouldn't it? A. Yes.

3474 Q. Now under those circumstances, Mr. Waddell, how long do you think it would have been before some other person would have come along and took three or four mills and gradually these associating companies would have had nothing left if they had acted in that way; that is just what would have happened, isn't it? A. No, I think not; there are very few people going into the powder business; the Chattanooga was built by men who built mills for Miami.

Q. Then your idea is that the du Pont and Hazard should have maintained their price of $1.48, not lowering it when the Phoenix and Chattanooga cut their price; is that what you think? A. Yes, that is the way I feel about it; there was room enough for all of us.

3475

Q. February 23, 1895.

(Mr. Button reads Exhibit 116.)

Q. That was in February; there wasn't enough money for anybody at 85 cents, was there, Mr. Waddell? A. No.

Q. Did you write these letters in April, 1895 (handing papers to witness)? A. I don't know whose that is (indicating); all except that one (indicating).

Q. All except the one dated April 18th? A. It seems to be written by some one else. 3476

Mr. Button (reading):

"Cincinnati, April 1/95.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We confirm message wired you this date reading: 'Kings have re-entered Pocahontas district rebating to 95 on enough kegs to net 92½. Phoenix sold at 90. L. & R., Kings and Phoenix have quoted New River 90 against our 95. Kings quote Ironton 85 to due Pont customer. Rood goes Kanawha, tonight. Hazard advised.' 3477

Truly yours,

R. S. Waddell, Agt.

P.S.—Have just read your reply to meet these conditions and will do the very best we can. A."

3478 Q. Therefore at that time you were all actively competing for the business in the Pocahontas district and the New River district, weren't you; du Pont, Hazard, Laflin & Rand, Phoenix, King and everybody else? A. Yes.

Q. Entirely open market; open competition, wasn't it?

Mr. Button (reading):

3479 "April 11, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. Rood has just returned from Kanawha and New Rivers and reports a badly demoralized condition. This I anticipated from letters that come to me prior to his visit and during the time he was en route.

3480 A man representing the L. & R. Powder Company travelled up the Ohio, Kanawha and New Rivers playing havoc with prices. He did not pretend to use any judgment but quoted indiscriminately to every operator, storekeeper and clerk that he met. His work reminded me more of the 'bull in the china shop' than that of a business man. At a dozen different points he bragged about the Laflin & Rand Powder Company and the wonderful influence they had on the powder business; he told several of our best friends that the 'L. & R. Company had downed du Pont and Hazard on many occasions and that was his mission to the Kanawha trade now; that it would only be a little while until we were out of that valley'; he stated

that he had heard our price was 90 to 95 cents on Kanawha and from 95 cts. to $1.00 on New River, but he would make them an 88 cent price throughout, and if that was not sufficient to take the trade, they would do something better if the people would come to them. He did not sell any powder, but Rush-Run, Union, Gauley Mountain, Fayette, Collins, Beury, Quinnimont and McGuffin all wrote me concerning his action. I telegraphed Mr. Rood when we learned 3482
the condition of business that we did not wish to lose any trade at this time and to meet the price, but under no circumstances to quote where no figure had been named. He now reports that it would not be possible to find a man in that section who did not have the business card of the L. & F. salesman or a written memorandum of his price either on the card or paper. Mr. Rood took a number of orders—all of which are to be shipped in April and May. Two or three of 3483
these are at 90 cents, but more of them are at the L. & R. quotation. I have not received the orders and do not know which brand of powder they will take, nor do I know the exact date of shipment. Herewith is the list:

McDowell, 400 kegs at 89 cents.

Beury Coal & Coke Co., 400 kegs at 90 cents.

Rush Run Coal & Coke Co., 800 kegs at 90 cents.

J. A. McGuffin, Agt., Longdale Iron Co., 800 kegs at 90 cents.

Nuttallburg Coal & Coke Co., 400 kegs at 88 cents.

3484 *R. S. Waddell—Cross*

Wm. Beury-Cooper & Co., 800 kegs at 90 cents.

Belmont Coal & Coke Co., 400 kegs at 88 cents.

Union Coal & Coke Co., 400 kegs at 88 cents.

Winifrede Coal Co., 800 kegs at 85 cents.

A. (Interrupting): Are those carload orders, please?

3485 Q. What? A. Are those carload orders?

Q. Yes, 400 and 800 kegs each. A. I thought so.

Mr. Button (continuing reading): "The latter is the price of Kings and Phoenix and the L. & R. people named the same figure in competition.

We had an order from F. E. Hayward & Co., Ironton, Ohio, for a car of Hazard powder at 85 cents, bnt they have countermanded the order as they say our price is a little above the quotation made them by

3486 others. I sold last week 4,000 kegs to Superior Coal Co., Wellston, Ohio, Hazard at 88 cents and ordered 2,000 kegs of this for prompt shipment; the other to follow in thirty days. They were quoted Miami and Kings at 85 cents. I sold Globe Iron Co. 800 kegs Hazard at 88 cents delivered at Jackson, Ohio, and W. A. Murdock, Ironton, Ohio, 800 kegs at 85 cents. Formal orders will be sent in the first of the week as soon as we can arrange exact dates for shipment.

We lost the Winifrede Coal Co. to Kings and Phoenix about two years ago and could not regain them without demoralizing prices in the Kanawha Valley. We now have an opportunity to recapture this trade provid-

ed you care to do so at the price named. They will take a car of 800 or 1,000 kegs Hazard FFF. for immediate shipment and this quantity will last them about 100 mining days, say three and one-half months. The Winifrede Co. is rich and their trade is very desirable. I am very sorry this demoralization in prices has occurred for we were getting along very smoothly with our trade and the break made by the L. & R. is as silly as it was unsuccessful. Up to this writing 3488
I have not rebated on a single keg and intend to fight it out on this plan unless it should develop that we would lose a customer permanently by being arbitrary. The only real troublesome case I have on hand is that of the Collins Colliery Co., Glen Jeans, where the Manager demands a rebate on Hazard powder. The same concern buys du Pont powder for Pocahontas district. Justus Collins is President of both companies and I do not believe he will insist on the rebate. Please wire me whether or not 3489
the Winifrede order will be accepted so that I may advise them and confirm the order.

Truly yours,

R. S. Waddell, Agt."

Q. This all occurred during a period concerning which you testified as follows yesterday, Mr. Waddell: "And then ensued what you have described as the 'vicious contest'? A. Yes. Q. Do you mean to be understood that that was a contest by this association on the one hand which has been formed under this agreement, and these new companies on the other? A. Yes; I knew that the contest was

3490 *R. S. Waddell—Cross*

not between those companies, it was between those companies as a unit and the others." It was this period that you referred to yesterday when you gave testimony, wasn't it? A. Yes, sir.

Q. In May, 1895, did you go on with this correspondence (handing papers to witness)? A. These are my signatures.

Mr. Button: Mark those.

(Same received in evidence and marked
3491 Defendant's Exhibits A-122 to and including A-128.)

Mr. Button (reading):

"May 3, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. J. Smith Talley made a call at our office yesterday to chat about the coal
3492 interests, and I took occasion to inquire into his different holdings. He told me that Mr. Eppert, several years ago was a clerk in their office at Coal Bluff; that he desired to purchase some stock and Mr. Talley let him have a few shares in Coal Bluff Mining Co., on which Mr. Eppert paid 7 per cent. interest until the stock was entirely paid for. Later he sold out all of his stock in Coal Bluff Mining Co. and moved to Clinton, Ind. In two years after this, desiring to enter the coal business again, Mr. Eppert organized the Eureka Block Coal Co. and in order to interest Mr. Talley and secure his favor and influence, he gave Mr. Talley one share in the Eureka Block Co. and made him presi-

dent. Mr. Talley does not claim to own the one share nor to have anything whatever to do with the business management or policy of Eureka Block Coal Co. Mr. Eppert does not own $1 of stock in Coal Bluff Mining Co., but is the chief owner in Eureka Block. I told Mr. Talley very plainly that he having been a customer of our Chicago office, I was not authorized to sell him powder, as our principals prefer to keep distinct the trade that belonged to Cincinnati and 3494
Chicago offices. He demurred to this proposition but said it was your business and proper for you to direct how you wished it handled.

I inquired particularly as to the prices quoted Mr. Talley and other operators and am prepared to say to you that the 83 cent price was quoted all the Terre Haute operators by Kings. The 82 cent price was made to them by Phoenix. If you failed to sell Mr. Talley at 85 cents the order must have gone to the King Powder Co., from whom 3495
he has purchased considerable powder. I did not go into any discussion of questions that were mentioned in your letter, but made my investigations wholly as to Eureka Block Coal Co. I now think this trade belongs to the Cincinnati office and the Eureka Block Co. is entirely independent of Coal Block Mining Co.—although Mr. Eppert and Mr. Talley are good friends and the latter is nominally president of Eureka Block Coal Co. In reply to my question as to how much Mr. Talley had invested in Eureka Block Coal Co. he said: 'Not one cent! The single share of stock he holds was donated.'

Truly yours,

R. S. Waddell, Agt."

Q. Therefore the Kings Company had quoted 83 cents all through the Terre Haute district? Had they not? A. On that day, yes.

Q. And didn't you know, Mr. Waddell, that the du Pont or Hazard had never gotten down to 83 cents on that date anywhere? A. I did not know that.

Q. Did you know that they had? A. On that particular day I didn't know.

Q. Or theretofore? A. I know that we had Mr.
3497 Talley's trade and all that trade in Terre Haute when the fight ended at 80 cents.

Q. You held Talley, up to that time, that your salesman Mr. Rood made contract with him to take part of the stock in a powder company that he organized in 1897? A. Yes.

Q. Mr. Talley was one of the same men who went in with Rood and made a contract with Mr. Rood for the building of the Indiana mills? A. He was president of that company.

Q. And the Phoenix was selling as low as 82 cents throughout the whole district? A. That par-
3498 ticular day I presume it was.

Q. In May, 1895? A. Yes.

Mr. Button (reading):

"May 23, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Herewith I hand you copy of a letter from Chas. F. Keeler, owner of Diamond Block Coal Co., Brazil, Ind. It indicates that our competitors are cutting prices in the Brazil District to 80 cents net. Our price to Mr. Keeler has been 90 cents. He

will soon be the largest consumer of powder in Western Indiana and I think he is loyal to us under equal conditions.

Truly yours,

R. S. Waddell, Agt."

Q. So as against your price in the Brazil district of 90 cents, they were then quoting 80, were they not? A. Yes. 3500

Q. And this is the same Keeler whom you in 1892 made a contract with and who co-operated with you to build the Buckeye mills, didn't he? A. He took $5,000 worth of stock of the Buckeye.

Q. He was buying powder from the du Pont Company as early as 1895, was he not? A. Yes, but then he bought the Indiana and built the mills.

Mr. Button (reading):

"May 27, 1895.

3501

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: Herewith I hand you copy of letter Mr. Chas. F. Keeler, in reply to mine asking if the offer was made him in good faith or merely to force us down. I said, business men should not recognize sharks in the powder line any more than they would in Coal; that we requested fair dealing.

I think Keeler is all right and know his Supt. is our friend. I will try to find out the source of the offer.

Truly yours,

1 Enclosure. R. S. Waddell, Agt.

(In ink): Since dictating above I have your letter declining the order. As Mr. Rood will be in that locality this week I will have him try Keeler for a better price and endeaver to hold him. W."

Then Mr. Keeler writes on May 24, 1895:

"R. S. Waddell, Esq.,
Cincinnati, O.

3503

Dear Sir: Your esteemed favor of May the 23rd received, and in reply would say that the parties that gave me the quotation of eighty cents did not know that I had an order in with you for a car, and I am satisfied that they expect to fill my next order. I would not treat your house unfairly by trying to get quotation other than in a legitimate manner. I am satisfied that you can do as well by me as any other firm, and also that it is your disposition to do so.

3504 We are nearly out of powder, and I hope there will be no delay in getting the last order in.

Yours truly,
(Signed) Chas. F. Keeler."

Q. They declined that order even at a higher price, the du Pont Company did, Mr. Waddell? A. Yes, they might have had to rebate on a whole lot of trade there that they didn't want to.

Q. July, 1895, did you write these letters, two of them (handing witness)? A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-129 and A-130.)

Mr. Button (reading):

"July 10, 1895.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: Some time ago I wrote you that Mr. Wente of the L. & R. Cincinnati office, had gone through the Kanawha-New River district offering lower prices to operators and endeavoring to capture our trade. We made an 88 cents price to several companies. These visits have been repeated and he has cut the price one, two or three cents, as might appear necessary to get the order. 3506

He sold a carload to Gauley Mountain Coal Co.—a Hazard customer, at 87½ cents, and another carload to Great Kanawha Colliery Co. at 87 cents. The first car was shipped June 28th. I had a letter from the Great Kanawha Colliery Co. and quoted them 88 cents. Mr. Wente happened to be in the locality and cut our price one cent a keg for 400 kegs. He has made three visits to that district since May 1st. It is impossible for us to keep traveling back and forth from Kanawha and so long as he cuts the price some trade will be lost. He has made six different prices in the Valley: 90, 88, 87½, 87, 86 and 85 cents per keg. I could not safely risk a quotation in that district. 3507

If Mr. Wente has control of L. &. R. it has passed into very uncertain care. Mr. Turck, president, dismissed him as a failure, and Mr. Taylor, Cincinnati Agent, recommended him to Hercules. Mr. Haskell,

president, said if he was good for Hercules, he ought to be good for L. & R. under proper direction, and I presume we now have an example of 'proper direction.'

I am sorry that the L. & R. Co. find it necessary to lower the price in the Great coal district 5 cents per keg in order to market 400 keg cars and create the expectation that they will capture a large trade, for many years loyal to other companies. We
3508 have taken orders as follows:

Great Kanawha Colliery Co., Mt. Carbon, W. Va., 400 Hazard at 87 cents; shipment Sept. 1st.

Gauley Mountain Coal Co., 1,000 Hazard at 87½ cents, shipment Sept. 1st.

Mt. Carbon Co., Ltd., Powellton, 800 Hazard at 88 cents; shipment Sept. 1st.

Cannelton Coal Co., 400 Hazard, at 89 cents; shipment Sept. 10th.

Central Coal Co., 800 du Pont, at 88 cents; shipment Sept. 15th.

3510 We expect orders for two other carloads du Pont powder; one at 87, the other at 88 cents, for shipment about September 1st. We took these orders to keep the parties from buying of others and force them to come to us if lower offers were made them. Please advise if we may accept these orders; if so, I will make formal acknowledgment and try to bind the parties to take the powder. It is possible that some of them will need powder earlier than the date fixed. In taking an order for future shipment they usually place it far enough ahead to be safe, they specify an earlier date if they need it.

We send order today (400 kegs Hazard)

to new mine opened by Fayette Coal & Coke Co., at South Nuttall, at 92½ cents. This was a Phoenix quotation in competition with ours at 95 cents.

Truly yours,

R. S. Waddell, Agt."

Q. Now, was this the competition between the associates that you mentioned yesterday morning as 3512
being formal and not real? A. It may have been competition or collusion, I don't know.

Q. Well, this is the competition you had in mind when you said the competition such as it was between the associates was on the surface and not real, isn't it? A. They took turns about pushing it down until they got it down.

Q. Is not this the competition you had in mind when you made that statement yesterday morning? A. Yes, this is the competition.

Mr. Button: Here is one more in July, 3513
July 17, 1895: "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: On June 8 we submitted to you orders from Zeller & Sigler and others in the Brazil, Ind., district at 80 cents for blasting powder. Among those who tendered us orders at this price were the Superior Coal Co., Jackson Coal & Mining Co., Brazil. Immediately after we declined the offers the Laflin & Rand's Chicago office sold Superior Coal Co. 1,000 kegs at 80 cents, and Mr. Donnelly, salesman for Mr. Rice, called on Zeller & Sigler and told them they were out of their district for Hazard and du Pont Powder, but he took their order for a car-

load of Austin blasting at 80 cents. In submitting an order to us they mentioned these facts and inquire how it is that our Chicago office lap over into the Cincinnati territory with Austin brand and take orders that du Pont and Hazard declined.

80 cents seems to be the uniform price for Phoenix, L. & R. and Austin powder in the vicinity of Terre Haute and Brazil.

I hold Zeller & Sigler's order for 800 kegs,
3515 du Pont, at 80 cents, for shipment to arrive about August 1st to 5th.

I also have an order from Parke County Coal Co. for a car of Hazard F. (Labelled FF.) at 80 cents; early shipments.

Laflin & Rand Co. are crowding strongly for trade about Brazil. What action do you desire us to take regarding these two orders?

Truly yours,

R. S. Waddell, Agt."

3516

Q. That is in July. A. In August, 1895.

Q. August, 1895, and October, 1895, did you write these letters, Mr. Waddell (handing papers to witness)?

The Court: 1895?

Mr. Button: 1895.

A. That is my signature.

Mr. Button: Mark them.

(Same received in evidence and marked Defendants' Exhibits A-131, A-132, A-133, A-134 and A-135.)

Mr. Button (reading):

"August 14, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: In accord with Mr. Weightman's request that we ascertain what brands were being offered in Brazil, Ind., district at 76 cents, I sent Mr. Rood to inquire. Parke County Coal Co., Chicago and Indiana Block Coal Co. and Zeller & Sigler had reported this price to us. Mr. Rood found that Phoenix Coal Co. had offered at 76 cents to 3518
two parties and had offered Lancaster Block Coal Co., Terre Haute, at 75 cents. He also learned of a quotation of this figure on Austin brand. Later I received his T/D reading: 'Talley and Martin have letters dated August 8th, from King quoting 67 cents. I saw them. We better meet Zeller and Chicago Indiana.'

Later I had a message from him stating:

'I mailed King's letter.'

I have wired you message reading:

'Rood wires: "Have mailed you King's let- 3519
ter to Talley same to Parke County, quoting 76 cents"; advises we accept Zellers and Chicago Block. Kings appear to have written all principal Indiana consumers. Hazard advised.'

And now confirmed. This message was sent in duplicate to New York and Wilmington.

I expect to receive King's letter in the mail tomorrow morning. If it contains anything unusual will wire you. This seemed of sufficient importance to give you the facts and if you wish to supply Chicago and Indiana Block with a car of Hazard or to hold

Zeller and Sigler on their proposition for a carload, the way is still open.

Awaiting your advice, if there be anything further, I remain,

Truly yours,

R. S. Waddell, Agt."

Q. That reads, Mr. Waddell, that Mr. Rood found
3521 the Phoenix had come in and had offered at 76 cents to two parties and had offered Lancaster Block Coal Company, Terre Haute, at 75 cents. That is undoubtedly a misprint for the "Phoenix Powder Company"? A. Yes, it referred to that.

Q. Yes. Don't you recollect in August, 1905, that was the first 75 and 76 cent price that had been made and that it had been made by the Phoenix and Kings? A. No, I think there was the price of 75 cents made to Sternberger before that of Jackson, Ohio.

Q. By whom do you recall? A. Hazard.

3522 Q. You think they made the first 75 cent price? A. Yes, to Sternberger.

Q. Do you remember the date? A. No, I don't, I know we held the trade of Sternberger up to the 1st of July, 1896.

Q. However, this quotation for all of these companies in Southern Indiana, that is the first time that any such price had been offered there? A. I think that is the bottom—75 cents.

Q. Consequently in that case, we have got down to the bottom, haven't we? A. Yes.

Q. On August 17th, this is Exhibit A-132 to the du Ponts:

Dear Sirs: Herewith I hand you copy of

letter The King Powder Co., J. S. French, to Parke Coal Co. I have the original, but must return it to Joe Martin, Manager. The same letter was sent to nearly all the Indiana Operators.

Mr. Rood writes that Mr. Rice advised Mr. Talley he would meet any price made him by responsible people, and that Austin and L. & R. have made sales to Brazil parties at 76 cts. H. Johnson, of Nickle Plate Mine, bought a car of L. & R. 3524

I wired Mr. Rood our best price for Indiana points is 80 cents.

Truly yours,

R. S. Waddell, Agt."

Q. Do you say in face of that, that your best price was for 80 cents and you subsequently made a 75 cent price? This was the date where Mr. Rood had quoted the best price for Indiana down as 80 cents. A. Yes, sir. 3525

Q. Then you previously said that you made a 75 cent price in Ohio? A. Yes, sir.

Q. Where was that? A. Sternberger, Jackson, Ohio, Southern Ohio.

Q. This shows that in Indiana you had made no better price than this 80 cents. A. Mr. Rice was the agent of the du Pont Company having control of the Talley trade; I didn't have Talley's trade for the du Ponts, and he had brought to me the price that was made.

Q. I understand, but your price for Southern Indiana here had not been below 80 cents up to this date? A. I don't believe I made any sale in Indiana at 80 cents.

Q. Now Mr. Rice was the Chicago agent—and he was the same gentlemen that has been on the stand here in this case, is he not? A. Yes.

Q. That was contiguous territory? A. No, that was joint territory—we both had the Terre Haute coal field.

Q. You had? A. Rice had du Pont and I had the Hazard.

Q. Did Rice—Mr. Rice's territory was contiguous to yours on the west, was it not? A. Yes, sir.

3527 Q. And this statement about Mr. Rice was as follows: "Mr. Rood writes that Mr. Rice advised Mr. Talley he would meet any price made by responsible people, and that Austin and L. & R. have made sales to Brazil parties at 76 cents." Have you any doubt at all that what Mr. Rice had done was to follow these prices down? A. I should not think he would have made a cut price to Talley because Talley was raised in Delaware, an intimate friend of du Ponts, and a loyal friend of Rice's. I don't think it would be necessary for Mr. Rice to go below the current price.

3528 Q. He is the same man that helped organize the Indiana Powder Company? A. Yes, sir.

Mr. Button: Now the King Powder Company letter to the Parke County Coal Company which was enclosed and which is referred to both in this letter and a previous one that I read and is numbered 133 is as follows: "We quote you blasting powder in lots of 800 or 1,000 kegs at 76 cents per keg; in lots of 500 kegs at 77 cents per keg; terms net cash in 10 days after date of shipment, powder delivered f.o.b. cars at your mines.

Our offer is for early acceptance, that is within a week or so, and for shipment to be

made within the next two or three weeks, or sooner, if you desire it. Can you not let us have some of your trade at these prices? Will give your orders our prompt attention. Please let us hear from you and oblige,

Yours very truly,

(Signed) The King Powder Co.,
J. S. French."

3530

Q. Now in November, 1895, did you write these two letters (handing papers to witness)? A. They bear my signature.

(Same received in evidence and marked Defendant's Exhibits A-136, A-137 and A-138.)

Q. And in December, 1895, these three letters (handing papers to witness)?

Mr. Button: I will read this one of October 5, 1895, Exhibit A-134, to the du Ponts: 3531

"Dear Sirs: Herewith I hand you copy of letter from Mr. Banen Coleman, Prest., Central Coal & Iron Co., mines at Central City and Render, Ky. Our competitor at these points has been the Chattanooga Powder Co., who named a price of 90 cts. A defense of this trade cannot, in any manner, influence Ohio River points nor affect Northern Districts. I am satisfied an advance above 90 cts. which would be made by taking the 85 ct. Ohio River price and adding freight would shut us out of that market in favor of Chattanooga. Do you authorize a continuance of the 90 cent price for Sycamore

3532 *R. S. Waddell—Cross*

powder in du Pont kegs? I can take care of the 200 keg quantity either by shipping to a local point on the L. & N. R. R. which gives us a car rate on 200 kegs, or by dividing a 400 keg car between Central City and Render as heretofore.

Yours truly,

R. S. Waddell, Agt."

3533

Q. That appears, therefore, for the Chattanooga Company in this territory had got the price down to 90 cents, had it not, Mr. Waddell? A. Yes, sir; that is Mr. T. C. du Pont's Company; Banen Coleman was his brother-in-law.

Q. That seems to have been a general practice in that territory, does it not, from that letter? A. In that little district, yes.

Mr. Button: On Nov. 25, 1895, Exhibit A-136 to the du Pont Company, is as follows:

3534

"Dear Sirs: We wire you this date message reading:

'King powder being sold through Kanawha by Noyes, Hubbard & Co., Charleston, at 85 cents. This confirms sale same brand to Sternberger. Displaces considerable du Pont-Hazard Powder.'

And now confirms.

Belmont Coal Co. had an order filed with us and notified that we should not ship it as they were offered powder for less money. Inquiry at their office by Mr. Rood develops that Noyes, Hubbard & Co., Oriental agents at Charleston, have sold them a carload of King Powder to be shipped December 1, at

85 cents per keg. I also have a letter from the Macdonald Coal Co., Macdonald, West Virginia, stating they are offered a car of powder at 85 cents. Mr. Rood called on Thompson & Brewster, operators at Crown Hill Works near Belmont and they informed him they had just purchased a carload of King Powder from Noyes, Hubbard & Co. at 85 cents per keg to be shipped about December 1st. I thought this important enough to wire you.

3536

Mr. Rood arranged with Belmont Coal Co. to let their order for the car of powder stand, for shipment during December, provided you desired to hold the trade at the King price. Evidently these people are pushing for trade and their efforts are meeting with some success. They have deprived Hazard of about 18,000 kegs per year to Sternberger mines at Jackson, Ohio.

Truly yours,

3537

R. S. Waddell, Agt."

Q. This is the trade that Hazard had never lost, and to whom you testified that you had made a 75 cent price a few moments ago, isn't it, Mr. Waddell? A. Yes; I don't remember the rates, we held Sternberger's trade at the finish at 75 cents.

Q. Possibly. A. But my impression was we made it this rate.

Q. I understood you to say a few moments ago in reference to the 75 cents price, a few letters back that we read you said that this was one of the companies you always had had their trade, that is the Sternberger Brothers, and that you had

made this price to Sternberger Brothers; now it appears about a month later in November, 1895, that Sternberger was still paying 85 cents for powder and that King got at Sternberger Brothers at that time? A. At that time, yes, they did.

Q. Consequently it does not appear that the Hazard Company had ever made the 75 cent price to them there that you refer to in that letter? A. I thought that was a previous time, it may have been a few days later, a few days.

3539 Q. You were mistaken then? A. I know we cut it to hold the trade of Sternberger.

Q. Possibly, and you know also that these other people were making it first, don't you, Mr. Waddell? A. I know that there was a very strong effort made by the King and all the other companies to get as much business as they could just at that time.

Q. That has been quite common since 1891, hasn't it, from this correspondence? A. No, they stood out a good deal, they let the other fellow have a lot of the trade and allow time to come down and claim their quotas, they were after it.

3540

Mr. Button (reading):

"Nov. 26, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Herewith I hand you copy of letter the Macdonald Colliery Co., Macdonald, Fayette County, West Virginia, mentioned in my letter of yesterday. I hold their order for 400 kegs du Pont powder for shipment December 13th at 88 cents as stated. I presume this 85 cent price was quoted on King Powder by Noyes, Hubbard

& Co. It shows what dependence can be placed in the Peters crowd for maintaining established prices. Noyes, Hubbard & Co. are agents of Oriental Powder Mills. They are not doing business without a margin. I venture they do not pay more than 80 cents for this King powder. This demonstrates that Kings do not intend to respect the agents of other companies as distributing points. They know Noyes, Hubbard & Co. very well as they have competed with them 3542
for a number of years.

Truly yours,

R. S. Waddell, Agt."

Q. These are your signatures (handing papers to witness)? A. My signature attached to this letter.
Q. In December, 1895? A. Yes.

Mr. Button: Mark them.

(Same received in evidence and marked 3543
Defendants' Exhibits A-139, A-140, A-141, A-142.)

Mr. Button (reading):

"Dec. 23, 1895.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: Mr. Rood reports that Ruffner Brothers are very much dissatisfied because we allow them no margin on powder, while their competitors in the same line—Messrs. Noyes, Hubbard & Co.—are allowed 5 cents

per keg, and although agents for Oriental, are selling Laflin & Rand and King Powder. Noyes & Co. claim to have placed 15 carloads of King and L. & R. powder, and we know of about ten of these. Some of them displaced carload orders we had filed with you for shipment. Kings gave them a special price (we believe 80 cents) and Noyes sold the powder at 85 as against our 88 cent price. Noyes & Co. claim that their offer
3545 from Laflin & Rand was ten cents per keg, and that they have a letter to this effect. I doubt the statement, although it is probable that to meet Kings' price, the L. & R. Co. consented to furnish them at 78 cents, the powder to be sold at 85 cents. We have held Ruffner Brothers as agents without any margin about as long as we can do so, and I think it will now be necessary to give them say, five per cent. on carload orders. This will give them a little opportunity to offset the King-Laflin & Rand-
3546 Noyes combination and I do not think they will take very much powder at any price for we have the Kanawha and New River territory pretty well filled up and orders in advance for several carloads. If this meets your approval I will get them in fix again as they are somewhat disgruntled at present.

Truly yours,
R. S. Waddell, Agt."

Q. This is in this vicinity over in West Virginia near the Phoenix Mills, Mr. Waddell? A. About a hundred miles from the Phoenix Mills. Ruffner was agent of the du Ponts and Noyes, Hubbard & Co. were agents for King and Oriental.

Mr. Button: This is a letter of December 27, 1895, to the du Ponts: "Dear Sirs: The efforts of our competitors to make trade in Blasting powder are wonderful and in proportion to the strain they are undergoing their business methods are becoming the more contemptible. I have been called upon the last two weeks to defend against two lies circulated by French of the King Co. He told through the Pocahontas district that we had sold certain customers 3548
powder at 85 cents and that I had exhibited the orders to Mr. Peters. This caused three of our customers to countermand their orders and I sent Mr. Rood to ascertain the cause. Our lowest price had been 90 cents until the change reduced it to 88 cents. Such deliberate lying and with such pernicious effects, stirred me up and I think we cleared the atmosphere in the Pocahontas field. Two of our friends stated that if the fact were established that French had 3549
lied on this subject and we had not sold certain coal companies at 85 cents, that the King Co. had placed their last powder with them. After obtaining the consent of our other customers Mr. Rood showed the parties the written order for the carloads in question and I wrote a letter refuting the falsehood. We have reinstated the business and I think permanently gained two customers who condemned such practices.

It seems very queer to me that when the King Co., about a year ago, desired to quit the Pocahontas district they went through the field with a representative of the Phoenix Co. and requested all of their customers to give their trade to the Phoenix Powder

Co. Now the Kings have returned to the Valley and are making unusual efforts to gain trade; the Phoenix salesman states that they have withdrawn from that district at anything below $1 and has gone through the Valley requesting that all of their old customers buy from the Kings. This may be a practical working of the old adage:

'Misfortunes make strange bed fellows,' but it is quite certain that there is a sym-
3551 pathy between Kings and Phoenix so far as the Pocahontas and Kanawha trade is concerned.

Truly yours,

R. S. Waddell, Agt."

Q. That is the same trade that you mentioned two or three times as having visited with Mr. French in 1899 and 1902, Mr. Waddell? A. Yes, we divided that territory, Hazard and du Pont two-thirds and King one-third, and when the mix-
3552 up came on the 1st of July——

Q. That was one of the rules of the association and as indicating your knowledge of the contract system which you have mentioned, that you described the Pocahontas? A. In 1899, yes.

Mr. Button: This is Exhibit 141, December 28, 1895, to the du Ponts:

"Dear Sirs: Herewith I hand you a letter received from Mr. Rood in reference to Diamond Block Coal Co. to whom we have just shipped a carload of powder. Mr. Rood mentions other important matters. J. K. Seifert, to whom Mr. Rood refers, is the Manager of New Pittsburgh Coal & Coke Co., New Pittsburgh, Ind., south of Terre

Haute. The L. & R. Co. took this customer from Hazard three or four years ago on a coal deal with Mr. Vehmeyer of Chicago.

Truly yours,

R. S. Waddell, Agt."

The enclosure there from Mr. Rood is as follows:

"Chicago, Ills., Dec. 27/95. 3554

Mr. R. S. Waddell, Agt.,
Cinti., O.

Dear Sir: *Diamond Block.* Keeler wants a price on 5,000 kegs of powder delivered about 800 kegs every six weeks, payable sixty days for each car or less two per cent. if paid within thirty days. Says he can contract and the party is anxious to close at 75 cents. He gave me as much as to say that it was Phoenix Co. He said that the 3555
Phoenix Co. would not sell him 1,000 kegs at 75 cents, but if he would contract for 5,000 kegs that they would make a contract at 75 cents. The rate of freight to Brazil from Belleville, Illinois, Phoenixville, is 19 cents per 100 pounds. So you see they realize 70 cents for it at mills. I said to Keeler that I could not give him a price and he said for you to get a price on 5,000 kegs, giving the best terms and discount. He said write it all out so it would be plain and if he accepted it then he would be through and not have to bother any more.

I think Laflin & Rand are cutting at Brazil. I understand that they sold the Supe-

rior Coal Co. at 80 cents, the sale was three cars to Brazil Block and two cars to Superior Coal Co.

Zeller & Sigler.

Sigler of New Pittsburgh says he is not paying 85 cents for powder, so that was the end of him. He says he buys Laflin & Rand and that Vehmeyer is not out but holds the agency and is still selling powder and taking part pay in coal.

3557

Truly yours,

Geo. L. Rood."

Q. Mr. Keeler was always after a lower price, wasn't he, Mr. Waddell? A. All buyers are after a lower price.

Q. He was a little more inclined that way than the others, wasn't he? A. No, I think not. The buyers were all playing the powder companies one against the other.

3558 Q. Now in January, 1896, did you write this letter (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibits A-143 and A-144.)

Mr. Button (reading):

"January 23, 1896."

To the du Pont Company:

"Dear Sirs: Herewith I hand you an extract from a letter written by Mr. Rood dated at Terre Haute, 22nd inst. In refer-

ence to the cuts that we have learned were made on Phoenix, Kings, and L. & R. powder at Brazil. While it has been impossible for us to get proofs in such form that they can be used, I am satisfied the L. & R. Co. have cut the price at Brazil.

Truly yours,

R. S. Waddell, Agt."

3560

The extract from Mr. Rood's letter is as follows:

"I then went in and had a talk with Mr. Eppert, Eureka Block Coal Co. He said that powder was being sold at less than 85 cents less 2 per cent. Said he had not purchased any but that an operator said to him that they need not pay 85 cents less 2 per cent., that he could buy for less; he, Eppert, said he would see the party and get particulars and let me know the facts 3561 in a week or so. I went to Brazil today; saw Zimmerman, he will take the two cars of powder but does not want them before March 1st. Johnson, of Nickel Plate Coal & Mining Co., said he could buy for less than 85 cents, Laflin & Rand or Phoenix Co.; that he would give me an order 82 cents, cash 30 days.

Superior Coal Co. say they bought two carloads of powder, one from Kings and one from L. & R. at less than 85 cents, so I think there is a cut going on.

I will get it in shape when I hear from Eppert, he is reliable and straight."

Q. Now in reference to the Chattanooga Company, that was business carried on in a district which was reached by your brother's office during this period, was it not, Mr. Waddell? A. Yes, sir; he was in charge of the Southern District at that time.

Q. You were familiar with it I understand you to have testified the other day from conversations with him and correspondence and so forth? A. In a general way, yes, not to a——

3563 Q. Is it true that the same things that had been going on in the district that was reached by the Chattanooga Powder Company, Tennessee and the Southern States, that the Chattanooga had cut the price and gotten away your trade with the du Ponts and Hazard Companies, is not that true? A. No; I think my brother had—I know his statement to me was he had a wide open instructions to meet any price that was required to shut the Chattanooga out of the trade in the Southern States. That was a limited field and they could afford to give that kind of instructions there.

3564 Q. That is the same statement you made, isn't it, in regard to the Phoenix trade in the Government case, that you had wide open instructions? A. No, I never made such a statement. I would be glad if you would point it out.

Q. I may be mistaken about it, but I think you did. Page 128 of the Government record you say: "I reported to the company the prices made on Phoenix Powder in my territory, usually by wire and received wire instructions to cut the price and hold my trade." That was true, wasn't it? A. "Cut the price and hold my trade."

Q. That is to cut the price? A. "Cut the price" they had given me already "and hold my trade"; that didn't mean, it was not a wide open price.

Q. Oh, no? This is in regard to the Phoenix contest that we have just read this correspondence about? A. Yes.

Q. So that you had instructions to cut the price and hold your trade. You mean by that to cut the price made by the Phoenix Company, didn't you? A. Oh, yes; I had abundant instructions of that kind as I have related here that I had; but they were not a wide open price; to make any kind of a price I believed as was necessary. I had numerous instructions to cut the price and I did it frequently. 3566

Q. It was in reference to the Chattanooga that you had these instructions then? A. No, that was in reference to my trade in the Northern States.

Q. I know, but it was in reference to the contest against the Chattanooga that you had open instructions to make any price you saw fit. A. I didn't have those instructions, my brother had them.

Q. Page 124. Did you testify as follows in regard to Chattanooga business: "At first they were to telegraph the companies"—— I will read the question on page 123. "Can you tell what the particular instructions were?" A. "At first they were to telegraph the companies whatever price it might be necessary for them to meet to hold their trade, and on receipt of their instructions to hold the trade at that price, which was made. Towards the close of the fight we had open instructions to meet any price made by the Chattanooga Powder Company." Did you have any such instructions as that? A. Those are the instructions I am speaking of that my brother had. 3567

Q. You say here "We have"; you mean your brother had? A. Yes; I used "we" very frequently there in reference to our companies. I didn't have charge of this Southern district at that time.

Mr. Abbott: Do you think it would be proper to read another question?

Mr. Button: Certainly. "How long were you engaged in the contest? A. It ended at the general round-up of the Independent Powder Companies about July 1, 1896." I have no objection to reading it, though I think that that hasn't anything more to do with what he said here.

Mr. Abbott: This refers to other things.

3569 Mr. Button (reading): "Q. You have stated in answer to my question that your brother, F. J. Waddell, was associated with you in this contest. Was he? A. A part of the time he was my sub-agent in charge of a branch office at Chattanooga, and the remainder of the time he was a direct general agent of the Hazard and du Pont powder companies at Chattanooga in charge of the Southern States. Q. Were you in consultation from time to time? A. We had frequent consultations and constantly cor-
3570 respondence."

Q. That is the way you got your information about the Chattanooga or Southern, wasn't it? A. Yes, and from discussions with Eugene du Pont while the fight was going on, I knew something of it.

Q. You recall your correspondence between your brother and the Hazard and du Pont companies that was introduced in this record on this subject? A. No, I don't.

Q. Were you familiar with it? A. I never read it.

Q. I would like to call your attention to some of it.

Q. Will you look at the exhibit marked No. 61 on page 194 of Defendants' Record of Exhibits and see if you know anything about the conditions that are there mentioned in regard to the Southern Trade (handing book to witness)? A. No; this is a letter from Fred J. Waddell, Agent of the du Pont Company, to the company.

Q. Were you familiar with the facts mentioned in that letter? A. No; I don't know anything about it.

3572

Q. Therefore there were matters about that situation that you didn't know about, were there? A. In the Southern States yes. I only knew in a general way about them.

Q. Then you are not prepared to say, are you, Mr. Waddell, that the Chattanooga Company did not cut the price of the du Pont and Hazard throughout the territory there and capture a lot of the trade? A. I don't know.

Q. That is a matter that your brother would be particularly conversant with, isn't it? A. Yes.

3573

Q. You say that you would not be famaliar with any of the correspondence between Mr. F. J. Waddell and the du Pont Company? A. I would not say that. There may have been some part of it that I have known about; but I would not be able to distinguish what it was now. He was the general agent, representing the Hazard and du Pont Companies there. He did not report to me and I had nothing to do with his business.

Q. I wish you would briefly examine a few of these things to see if they do refresh your recollection at all, Mr. Waddell. I will call your attention to these numbers, take Exhibit 67, say, at page 199 (handing book to witness)? A. I know nothing about that at all.

Q. Do you know anything about the facts stated in it? A. No, no, it is entirely out of my district.

Q. All right, take No. 70, page 201. Do you know anything about that letter? A. No, I don't know. That is a letter to the du Pont Company about some trade in Texas. I didn't know anything about that.

Q. You didn't know anything about the efforts of the Chattanooga Powder Company in Texas then? A. No.

Q. No. 72, page 204. Do you know anything about the Chattanooga's efforts in Tennessee? A.
3575 No; this is a letter of the same kind, to the du Ponts.

Q. No. 74, on page 207. Do you know anything about the Chattanooga's efforts around Birmingham? A. I don't know anything about No. 74, that is an identical letter——

Q. I will ask you whether you know about the conditions under which the Chattanooga Powder Company was offering powder in and around Birmingham, Ala.? A. Yes, in a very general way. I knew that the fight was very severe down there. I frequently talked with my brother in connection
3576 with the Chattanooga being pushed up in my territory—what was going on there; and he would give me in a very general way, without particularizing about customers or any special trade or any particular locality, give me a general idea about how the fight was progressing. That is as much as I knew of it. And then in a general discussion with Eugene du Pont during this long period I knew that a fight was going on there. I knew without going into particulars of the items or the special trade that might be written about, I didn't know anything about those.

Q. Well, then, your knowledge to the effect that your brother had instructions—open instructions to cut the prices that were made by the Chatta-

nooga Company and by the Southern is based on nothing except what he told you? A. I think that is all. I am not sure about that. I know I wondered at such a wide open price.

Q. Never mind you wondering, Mr. Waddell, I want to know if you have any sources of knowledge. A. I think that is all I had to go on was my brother's statement that he represented the du Pont Company and was supposed to know what he was doing.

3578 Q. Is it possible that a long line of correspondence could have passed between Mr. F. J. Waddell with reference to matters in his district concerning the Chattanooga Company and the Southern Powder Company and their trade, giving the details and who was doing the cutting and you know nothing about it? A. It might have gone all in, oh, yes; I would not see that correspondence unless Fred sent me a copy of his letter; if so, you would find it in the Cincinnati files.

3579 Q. Now, Mr. Waddell, didn't you know, is the fact that during the whole period from 1891 to 1896, your brother at Chattanooga was making the same appeals to the du Pont Company and the Hazard Powder Company for permission to meet the prices that had been named by those competitors as you were in the Cincinnati office? A. I don't know what he was doing; but it was the duty of every general agent, in every disturbed district, to inform his principals as to what the conditions were and leave it up to them to say what they were going to do about it.

Q. The fact is that you don't know much about conditions in those Southern States, isn't it, Mr. Waddell? A. Not in detail at that time.

Q. Then you don't want us to understand that you were making any detailed statements about the kind of a contest that was waged against the

Chattanooga and the Southern, did you? A. Not down to detailed letters; I knew the general proposition that the fight was going on and how it was conducted in a general way, and I knew the result.

Q. Now we have been over this correspondence in your district from early in 1891 to January 18th, 1896; when was it that some of these companies were purchased—the stocks in them were purchased? A. My impression is that the Phoenix was bought about May, 1896—I am not sure as to
3581 that; it went into the pool when the pool was formed on July 1st, 1896.

Q. And the Equitable was some stock purchased of du Pont about that time? A. What is that?

Q. The Equitable, some stock was purchased about that time? A. Yes.

Q. And the Chattanooga? A. Fifty-one per cent. of Chattanooga.

Q. Now do you know what prices were paid for the purchase of those stocks? A. No, I think I did one time, but I have forgotten all I knew
3582 about it.

Q. Don't you know that they were fair and reasonable prices that were paid? A. No.

Q. Consequently not knowing what was paid these companies, you are not exactly in a position to say they were ever killed, are you, Mr. Waddell? A. Yes, so far as being competitors in the trade and selling powder, they were.

Q. Oh, well, that was all you meant then by saying these people were killed; that is, they got out of the business? A. They went out of the business.

Q. That is all you meant by that expression, is it? A. Well, I meant that the powder companies bought the mills and operated them.

Q. Didn't you mean that they were reduced to such circumstances that they had to get out and

lose all their money; wasn't that what you meant when you used the expression? A. I certainly knew that they didn't have any chance to make any money.

Q. Wasn't that what you meant when you said "we killed them off"? A. We drove them out of business.

Q. So that what you meant was that we took their property away from them and their money and their plants? A. No, we didn't take the property away from them; simply made it impossible 3584
for them to conduct business at a profit.

Q. And they may have gotten out of the business with a large profit on account of the sale that they made, may they not? A. They may have; so far as I know they may have.

Q. And that is all you meant when you said here that those companies were all killed, is it? A. That wasn't all I meant.

Q. What else did you mean? A. I meant that they were no longer competitors in the powder business, that they were out of business; whether 3585
they sold out at a big profit or a little profit I don't know anything about it.

Q. Well, it is rather doubtful which side of this contest got killed, isn't it, Mr. Waddell? A. No.

Q. That would depend somewhat on how much they had to pay these companies, wouldn't it? A. No; it was the survival of the fittest, that is all.

Q. Well, you don't know how well they survived anyhow, do you? A. Yes; I know how well Hazard survived and du Pont.

Q. How much did the Hazard get; they didn't get any money, did they; you say they survived, what did you mean? A. They survived—they were very much alive after it was all over.

3586 *R. S. Waddell—Cross*

Q. So were the Phoenix and the Chattanooga, weren't they? A. No.

Q. They were dead? A. They were dead so far as they were concerned; the powder companies handled all.

Q. Did you write this letter of January, 1897, did you after the round up (handing paper to witness)? A. January, 1897, no, that is not my letter.

Q. Whose is it? A. F. J. W.

Q. Well, in January, 1897, your brother, F. J.
3587 W., was in your office in Cincinnati, as your agent, wasn't he? A. No—he may have been there and written it.

Q. Won't you read the letter and see whether he was authorized to write that letter and sign your name to it? A. (After reading): I don't know who authorized him; I don't know anything about that letter—never saw it before.

Q. Do you know anything about the facts mentioned in it? A. No, but I know the general conditions there and I would be glad to throw all the
3588 light on it.

Q. I would rather have the contemporaneous record, I think, Mr. Waddell? A. I don't know anything about the letter.

(Letter marked for identification, D. A-145.)

Q. Wasn't Mr. F. J. Waddell authorized to sign various letters for you at this period? A. F. J. Waddell signed my name in the south for years by him and that was the form that the Hazard Powder Company required. The agency was run in my name for a long while and I never saw the correspondence or knew anything about it.

Q. Well, don't you know that there were years when he was in your office at Cincinnati that he

signed your name, "R. S. Waddell, by F. J. W." from the Cincinnati office? A. He was there just the last years I was in Cincinnati. I have forgotten now when he came.

Q. He came when he closed the Chattanooga office, didn't he? A. Yes; I don't know when it was.

Q. From that time on for a good many years he signed your name in just the way these letters are signed, didn't he? A. Not for a good many years; I should think one or two years; I don't 3590
recollect.

Q. And they were signed in this way, weren't they, the same as this exhibit? A. Usually while he was in Cincinnati he signed the name of the E. I. du Pont de Nemours & Company by him—by F. J. W.; the Hazard Powder Company by F. J. W.

Q. So when a letter turns up signed by R. S. Waddell, per F. J. W., you were not responsible for it, is that the idea? A. Well, I might be; I don't know; it depends upon the letter; if I could 3591
recognize it, that letter—I don't know anything about it.

Q. Well now you testified yesterday morning in regard to these contests as follows, did you not, Mr. Waddell, page 4240: "Q. And what did they do to these new companies? A. To the independent companies? Q. Yes. A. Each company named a price to agents—and the agents would ask for a price; I wrote hundreds of letters asking a price, lower price, to get the trade from the independents, and I got it. Q. And the Association granted such permission to you and in that way killed off these three companies, did you? A. I don't know what the Association granted, I was not present; but I inferred they did; they cut prices.

3592 *R. S. Waddell—Cross*

Q. Those three companies were killed off then by or through the cuts on the part of the allied companies? A. A concentrated fight for the entire district. Q. And a fight that was concentrated and I suppose confined to the territory that you have described as 'disturbed district,' is that correct? A. Yes, sir. Q. That is right. A. Yes, sir." That is the way you testified yesterday on that subject? A. That is right.

3593 Q. And on page 4241 you testified as follows, did you not? "Now who were your competitors, you were representing then the Hazard and du Pont Company in Cincinnati, who were your competitors in that district? A. Our competitors were of two kinds, we alone King; we didn't bother a King customer any more than we had to when they would ask for prices. When they asked us for prices we had to quote them; we respected the trade of the other associated powder companies as far as we could; we had to make a showing of doing business. Q. Did they also respect your

3594 trade? A. Yes, sir; very largely, they had to make a show of doing business and if they were asked for prices they have to quote and we had to quote. Q. No real effort to get the trade assigned to the other associates? A. No real effort unless it grew out of some trouble in our selling work, we didn't make any real struggle? Q. Who were your real competitors during that period? A. Our real fight was against the independents that were in the locality. The Phoenix and the Equitable got so much; the Equitable and the Phoenix had plants near the Phoenix, two plants at Conover and Kellogg, West Virginia, and an Illinois plant; and in competition with both of them; and in the Southern States at Chattanooga." Didn't you so testify yesterday? A. Yes.

Q. Oh, in regard to your brother's coming back

from Chattanooga you say you cannot give the date. "I know he was running it in 1890, 1891 and 1892, but how long he continued after that. Then I took it over again. Q. He had charge of it for two or three years and then they gave it back to you, did they not? A. I had it longer than two years—possibly four years. Q. Well, then, the fact was that they eventually gave it back to you? A. Yes, consolidated it. Q. And you brought him to Cincinnati, did you not? A. Yes. Q. And they discontinued the Chattanooga office." Therefore he probably was back in your office in 1897, wasn't he, when this letter was written? A. I don't know; I can't fix the date when he came back; he was for several years general agent in the south. 3596

Q. Well, four years from 1890 would be 1894; that gives you a lee-way of three years. Do you think he was in Chattanooga for seven years after 1890? A. I don't know how long he was there.

Q. Did you also testify yesterday: "Don't you know for a fact, Mr. Waddell, this further fact, that they never did any more than to meet the prices made by the Phoenix, the Chattanooga and the Southern during that period? A. Meet them only? Q. That is all, didn't you know that? A. Certainly not. Q. How much did they cut them? A. Cut whatever was necessary to take the trade, take the customer. Q. How much was that? A. We had the ability, the powder companies had the ability—— Q. How much was that cut, I don't care what the ability was? A. Cut so—whatever it was necessary to get the trade. Q. What did you say that was, how many dollars or how many cents? A. Five cents to ten cents a keg, whatever was necessary to get the trade. Q. Now that cutting began on the part of the older companies 3597

when? A. It began about the time the powder was put on the market; sometimes a little in advance." Did you so testify yesterday? A. In reference to what trade was that?

Q. In reference to the trade of the Phoenix, the Chattanooga and the Southern. A. I think so; we cut from $1.48 down to 80c.

Q. Well, this correspondence shows that powder had gotten down in January, 1896, to seventy-five cents a keg in some places; that was the minimum that it got anywhere, wasn't it, Mr. Waddell, so far as you can recollect? A. So far as I can remember, yes.

3599

Q. So if the time came when you got it all back as you have stated several times, it must have been not at a good price but at equal prices, that is, not lower than seventy-five cents, mustn't it? A. That was to only one or two customers, I think the seventy-five cent price; the general price was about eighty cents—my recollection is the Kanawha River about eighty-three to eighty-five cents; in the Pocahontas coal field at eighty-eight cents; we held the trade at the finish at about eighty cents; in Indiana there may have been a few cases——

3600

Q. What I mean is, that wasn't any sudden cut, beneath this eighty and seventy-five cents at the time you say you got all the trade back? A. No, that was the bottom.

Q. That was the bottom; now you have mentioned something about rifle powder, Mr. Waddell, and stated that at the end of this contest the price of rifle powder went up from something to $5.00 a keg; how long had that gotten—— A. Rifle powder it seems to me during the Phoenix and Equitable fight it got down to about $3.00, and it went from there, the first jump I think was to $4.00, and I

don't recollect what the—the day after the pool was formed it went to $4.00 and I don't know how much it went beyond that; it is there yet.

Q. Didn't you say here the other day in stating how much these prices were raised that black blasting powder went up to $1.25 and rifle powder to $5.00? A. Rifle powder——

Q. From three to five; that is what you said on your direct examination, wasn't it, on the telegram? A. After the 1886 fight, the mix up in 1886, my recollection is that the price of black blasting 3602
powder went from eighty cents to $1.50 and rifle powder went from as low as $2.15 to $5.00. Now after the 1896 fight it is my recollection that rifle had gotten down to about $3.00—$2.75 I think is mentioned in some of these letters, possibly it may have gone a little below $2.75, but it recovered on the telegram to put prices up. It went to $4.00 that is my recollection.

Q. To which? A. $4.00 I think is the price.

Q. Well, you testified to $5.00 on your direct examination; was that a mistake? A. I may have 3603
confused the two jumps.

Q. Page 1697—— A. If I testified that way I will correct it by saying that in 1896 it went to $4.00 the first jump.

Q. Well, now do you mean—or I will ask you first whether the Phoenix Company made rifle powder? A. They made rifle powder, I think, at their Farmingdale, New Jersey, plant; I don't know whether they did at the other plants.

Q. And did the Southern Powder Company make rifle powder? A. Very little of it; I think they made one carload.

Q. Well, you know that the blasting powder that they made was not good for anything, don't you? A. Yes, it was very poor stuff.

3604 Q. Therefore the most of the trouble they made was on their rifle powder, wasn't it? A. It was only in the Cincinnati markets as far as I know; they never reached any other of my territory.

Q. That was all through the south, wasn't it? A. I don't know what was there.

Q. Did this same contest involve this rifle powder business? A. Yes, that ventured into it, not right at the start, but a little later.

3605 Q. Page 1697 of the record you said: "In 1886, the first of July, 1886, when the first pool was formed the price of rifle powder jumped on telegram from $2.25 a keg to $5.00 a keg. Q. That was after the close of what contest? A. Against the King and the Ohio and the price of blasting went up from eighty cents to $1.50 on blasting. Q. After the next contest, how about the matter of prices? A. The first of July, 1896, the price advanced from eighty cents on blasting powder to $1.50 on telegram, and on rifle powder from $3.00 to $5.00. Q. What date was that? A. 1896." A.

3606 That should be $4.00.

Q. From three to four? A. That is my recollection.

Q. And $1.50—— A. $1.25 was the price after the 1896 settlement.

Q. But in this statement about blasting powder you correct it from $1.50 to $1.25? A. Yes, I thought I had corrected the rifle at the time too; the rifle should be $4.00; I think it remains at that price ever since.

Q. Well, now isn't it true that these two companies, the Southern and the Phoenix, shipped rifle powder to this entire territory and cut the prices on rifle very materially? A. The Southern never shipped but one carload, one lot of powder to the Cincinnati district. That was to Compton, Alt &

Company, Cincinnati; that was a stockholder in their company.

Q. He wasn't only a stockholder, but Mr. Alt was the man that bought the Southern Powder Company out when it failed, wasn't he? A. He had a mortgage on it.

Q. That is, it only ran a year or two and he foreclosed their mortgage and reorganized it? A. They never reorganized it; they tore the mills down and sold out to the du Pont and Hazard and Laflin & Rand; he tore the mills down. 3608

Q. Well, now, how low did they get the rifle powder; didn't they get it down to about $2.25 in Cincinnati? A. Yes.

Q. And in Louisville? A. The Southern was never in Louisville.

Q. Well, didn't the Phoenix get it down there and the Laflin and Rand? A. All of us. Yes, Phoenix was in the fight in Louisville.

Q. To St. Louis? A. I don't know about St. Louis; I think so.

Q. And practically all through the district? A. Not west, not to Kansas City, not west. 3609

Q. Now do you not remember, Mr. Waddell, that the same situation in regard to rifle powder existed as in regard to blasting, that is, that there was competition on the rifle powder between the Austin Company, the Laflin & Rand, the Phoenix, the Hazard, the du Pont, the Southern and possibly others, and that the prices were so wide open and that they were all competing one with the other during those four or five years? A. You asked me what I know?

Q. Yes, isn't that true? A. I know that the Cincinnati district after Phoenix began and Equitable began, the manufacturing of rifle, the prices went off. Up to that time the rifle had been $5.00. I know that all through New England, all over the

3610 Eastern seaboard, all over the west and southwest where the Phoenix didn't reach the price of $5.00 was maintained everywhere.

Q. It was not maintained in Georgia, Alabama and Mississippi, was it? A. No, that was in the disturbed district.

Q. And the disturbed district was of the same states that you mentioned this morning as being disturbed in regard to blasting powder, wasn't it? A. Yes, after the independents began the manufac-
3611 ture of rifle. They didn't begin simultaneously on both powders.

Q. Now this rifle powder business is one that you didn't testify very specifically about in the Government suit, wasn't it—where is that Vol. 1? A. What was that question?

(Question repeated.) A. I don't remember.

Q. Can you state who started the cutting on the rifle business, Mr. Waddell? A. No, I can't.

Q. Don't you know it was these new companies, the Southern and the Phoenix? A. No, I don't
3612 know.

Q. Pretty natural that it should be, isn't it, don't you think so? A. It wasn't natural during the King fight; I don't remember what the particular disturbance was when the——

Q. Well, now there couldn't be any such concentration of the fight in rifle powder as in the blasting, could there, on account of freight rates, that is, the price of rifle powder being four or five dollars a keg it can be shipped long distances, can't it, at a profit? A. Oh, yes.

Q. That is the freight rates do not confine the consumption in nearly the same manner as the freight rates do where blasting powder is concerned. A. Rifle was generally sold in small lots from distributing points; carloads were shipped

into Cincinnati, Louisville and other distributing points and sent out in small lots from there.

Q. And one of the largest dealers in rifle powder was the Hazard Powder Company, wasn't it, making all of it at Hazardville, Connecticut, and shipping it all through the United States, isn't that true? A. That was my largest trade.

Q. And the du Ponts made theirs where? A. Made theirs in the Brandywine down here.

Q. And the Laflin & Rand in the East somewhere, wasn't it? A. Somewhere in the East, I 3614
think.

Q. And the Austin at Cleveland? A. Cleveland, Ohio. Equitable at Alton.

Q. Did the Equitable make rifle? A. Yes.

Q. Are you sure of that? A. Yes.

Q. I thought they bought some rifle and resold it? A. They have made rifle in the past.

Q. I mean at this date? A. They have bought rifle for their cartridge works just before they bought the Buckeye mills.

Q. I am talking about the early nineties, from 1891 to 1896. A. Well, if they bought of du Ponts 3615
I didn't know it, just at the time.

Q. Well, I am asking for information, Mr. Waddell, I don't know, I am surprised to hear that the Equitable ever made any rifle powder; maybe they did. A. Yes, they did, and the Kings made it at Cincinnati.

Q. And the Kings at Cincinnati? A. Yes.

Q. Did you say in the Government suit, page 107: "The price of rifle powder has never varied from the price fixed in 1886, July, up to this date, excepting as I remember during the latter part of the nineties where there was some fear that the foreign powder would be admitted, and the price was changed slightly and that price has remained without change up to date on all brands in the

Association." Did you so testify? A. That was 1886.

Q. From 1886 up to date; the date was 1908 with the exception of a very slight decline in the latter part of the nineties; did you so testify? A. That is the way it reads here.

Q. Well—— A. But I have told you what the variations were.

Q. Well, I know you have. A. I presume 1896 was the last.

3617 Q. I know you have now told us what the variations were and you also told us then; is this what you said then, Mr. Waddell? A. I don't know whether I said that or whether it is a misprint; that may have been 1896 that I stated, that is what I mean, the price was fixed in 1886, then it was again fixed after the fight in the early nineties, in 1896 when that pool was formed, and it has never varied so far as I know from 1896 down to date.

Q. Then this statement as printed on page 107 is not correct? A. I should think not, no, it is not.

3618 Q. Now, then, we have been over this period from 1891 to 1896 pretty thoroughly, Mr. Waddell, and it appears that they were openly competing in the district that you have called disturbed, it includes a large number of states—the du Pont and Hazard with their plants, Laflin & Rand and their plants, the Austin with its plant at Cleveland, and King—the Austin was at Cleveland, wasn't it? A. Yes.

Q. King at Cleveland? A. Cincinnati.

Q. Miami; they had only one plant at that date? A. Yes, sir.

Q. Ohio at Youngstown, the Equitable at East Alton, and the Chattanooga at Chattanooga, Tenn., the Southern in Georgia, and possibly one or two

others, and that makes about nine of them, and they were competing each with the other, and the price went down to 75 cents a keg, didn't it? A. In a few cases, yes.

Q. Well, pretty generally? A. 80 cents was the general price.

Q. Now, then, 1903 to 1908, if we had had the 23 or 24 companies each with its plants, competing openly, and so on, you still think, I take it, that the price would have gone up to such an extent that you would have had thirty cents a keg profit on every keg of powder that you sold, do you? A. There was no competition between 1903 and 1908 between the Associated Powder Companies, sixteen of them, as represented by the du Pont Trust which had been centralized and incorporated. 3620

Q. You do not understand my question, Mr. Waddell. I know you claim that. My question is, we outlined the conditions yesterday, which I understand from you would have been ideal with each of these companies not combined, but running independent plants and competing for the powder trade, that is, the conditions as they should have been, not the conditions as they were, under which it appeared there would have been twenty-three, I think it is, independent companies, competing for trade in the Middle West. Now, then, in view of this fact that when you had nine competing there, that powder went down to 75 cents, I wish to ask you if it is still your judgment that with those twenty-three independent companies, or thereabouts, all competing openly from 1903 to 1908, if that had been the situation, is it still your judgment that there would have been thirty cents a keg profit in powder? 3621

A. My judgment is that if the independent companies, all of them independent of each other, had been operating at that time in the way they should

operate, that each one instead of relying upon a concentrated action, would have studied the good interests of their own business and conducted it with the expectation that they would safeguard their profits, that there would not have been such a reckless fight and cutting of prices. Business men generally when thrown on their own resources, do not give away their goods.

3623 Q. In other words, you think you would have gotten along better with 23 competitors than with nine, more chance of this harmonious recognition of other people's rights, protection of other people's trade; you think that, Mr. Waddell? A. If there were 23 companies and they were all independent, there would not have been a complete monopoly, a complete closing of the market and removing the markets, the trade of the United States, out of the reach of other independent companies, just as though the trade I reached were in Europe. I had no more access to it than if it were in Europe; it was monopolized by the contract system.

3624 Q. Your statement is based on the assumption that there is or has been some relationship between the du Pont Company on the one hand, and the Equitable, the Austin, the Miami, and the Kings, the other old associates, on the other hand, since 1904, has it not? A. Yes.

Q. And if you should happen to be mistaken in that, then your opinion as to what would have been is all wrong, is it not, or as to what did happen? A. No, I knew the reverse of it.

Q. If it should develop here that you are mistaken about these relationships that you think existed between the du Pont Company and these old associates since 1904, if that should develop, then your statement about the great control that the du Pont Company had over the business, would fall,

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would it not? A. No, for this reason and with this explanation: That they all had contracts with all of these companies, continuous, running on for a term of years, a part of the same system, and the Miami, the Equitable, the Austin and those other companies you have mentioned, were a part of the system of contracts, and those contracts were a part of the system, so that while their meetings may have discontinued, when they were no longer necessary, their actions under contracts and the monopoly of the trade continued on down for a term of years.

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(Motion to strike out answer overruled.)

(Question repeated.) A. No, for the reason that I have stated in the last answer.

Q. The reason you stated in the last answwer is that this relationship continued, is it not? A. Their actions under the old pool continued long after 1904.

Q. Now, won't you observe my question, and it is this: If you are mistaken about that matter— it is possible, you may concede that you might be on some subject—supposing you are mistaken, and this relationship did not continue down to date, then in that event, your contention about the great control of the du Pont Company over this trade would fall, would it not, that is my question?

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Q. I understand your contention is that there was some co-operation, in fact, you have so testified on your direct examination, that these old associates respected the trade of the du Pont Company since 1904, I think you said. They left alone the customer, if they found the Equitable or Austin had a contract with him? A. Yes, sir, that is right.

Q. Now, my question is, supposing you are wrong

3628 about that, and supposing they did not leave them alone, then no control, such as you have stated, would exist? A. I am not wrong, and I cannot suppose a condition of that kind when I know different.

Q. If I recall, that was a subject which you knew all about, this contract system, because you had seen kegs at these various mines which showed you what powder they used on their renewed contracts? A. That was one item out of a good many.

3629 Q. Then you finally said you never saw a contract of the du Pont Company renewed? A. I never saw the writing of them, no.

Q. So it is impossible for you to imagine that you could be mistaken on that subject as to this relationship that existed? A. No, I do not think I could be mistaken on that.

Q. Could you not make that assumption, Mr. Waddell, because I would like to have you state how much your claim of the du Pont's control over the trade is based upon that fact? (Objection over-

3630 ruled).

Q. After this episode in 1896, you had pretty good prices for two years, I understand, didn't you? A. Up to the time that the Indiana got its mills going, yes. I think that was about 1897, the fall of 1897.

Q. Your price was $1.25 for blasting powder, wasn't it? A. Yes.

Q. How long had Mr. Rood been with you when he started out on that enterprise?

The Court: This is 1897?
Mr. Button: 1897 now.

A. Mr. Rood was at the Cincinnati office of the Hazard Powder Company when I went there about

1883, about May, and I think he had been there possibly a year before that. He was under a contract for three years when I went there from the time he arrived in Cincinnati.

Q 1882 to 1897—then he had 15 years' experience, had he? A. Yes.

Q. And had been travelling all through that district there and getting acquainted with your customers? A. No, not all over the district; Donohue had a very limited territory and Rood's travels was nearly all together on rifle powder. 3632

Q. Well, now, just what was the scheme that Mr. Rood adopted for the promotion of the Indiana Powder Co., Mr. Waddell? A. Mr. Rood had been under contract for a three-year term, for a period up to the first of 1907. He desired to renew his contract with us, with Hazard and du Pont Companies, for another three years. He had been getting $3,300 a year. He wanted $4,000. He authorized me to make a contract for him. I went to New York representing him, to make the contract for him, and get $4,000 or anything less, not going below $3,500. He had had the question up with the Hazard Company and they told him they would give him $3,500, but they would not renew the contract, they would not make a contract with him. Rood wanted some assurances that he could stay with the company. I asked the Hazard and du Pont Companies to renew that contract, or could have it renewed at $3,500, which they were willing to pay. They told me to say to Mr. Rood that they would hire him from month to month at the rate of $3,500. That was unsatisfactory to him; I told them he would quit and he did. I didn't blame him for it. He had been continuously under contract for many years and had a large family and he was cut off with a month's notice. Mr. Rood left and went to Indiana, as- 3633

sembled a lot of his old friends and customers—J. Smith Talley, with the Coal Block Mining Company; Joe Morton, of the Rosedale Parke County Coal Company; Zeller and Sigler and Dave Nickel, all my old friends and personal friends, and they took stock in proportion to the number of kegs of powder they would consume in their mines. Maurice Sternberger, of Jackson, Ohio, went in with him and he asked these men to get together to furnish powder for their own mines,
3635 that was for their own purposes, and I think he was right.

Q. I beg pardon. A. I think he was right.

Mr. Button: I don't object to that, although I think it is not a proper comment.

Q. You say Mr. Rood assembled a number of his customers. You mean he assembled a lot of the customers of the du Pont and Hazard Company, don't you? A. Yes, they had been here and I imagine that they had been for some time, but
3636 we finally held them at the end.

Q. They were your customers at that time? A. At that time, particular time, they were our customers.

Q. The scheme was for Mr. Rood to get these mine operators to furnish him money to go into the powder business so they could make a little more profit from selling powder to their miners than they had theretofore been getting. Was not that what it came to? A. I don't know what the purpose was.

Q. You did know at that time, didn't you, Mr. Waddell? A. I knew that their purpose was to manufacture their own powder for their own mines.

Q. And you knew that they, theretofore, they

had been operating their mines and buying powder from $1.25 down to 80 cents, which they had been reselling to their miners at $1.75, didn't you? A. Yes, I knew that.

Q. And you knew they were not satisfied with that 50 cents they made on each keg of powder and wanted to go and make more, didn't you? A. After I educated them as to the prices of powder, that it could be made for 80 cents or less, they all wanted to go into the business.

Q. Theretofore they had been making that 50 3638
cents profit on the capital invested by the du Pont & Hazard people in the business, didn't they, without any investment of their own at all? A. They bought the powder and paid for it.

Q. And under those circumstances to furnish them powder the Hazard and du Pont Companies and other companies had spent immense amounts of moneys to establish plants and machinery for the purpose of furnishing that very trade, hadn't they? A. Well, the plants were established. The Hazard plant was established in 1835—before
these people were born—not particularly made for 3639
that trade. They had the mills, they were making the powder and had it for sale; but there was no compulsion on anyone to buy it; they could buy any powder they pleased.

Q. You didn't feel about Mr. Rood's proposition, at the time, just as you do now: That it was a perfectly proper thing for him to do, did you? A. I did.

Q. You did? A. I have always felt so.

Q. It was a kind of competition that you considered to be pretty dangerous to the business of the Hazard and du Pont Companies at the time? A. I did; I thought it was invulnerable.

Q. And you thought it would spread, didn't you? A. I thought if those coal operators made a great

success of the Indiana Powder Company, that other coal operators would do the same thing.

Q. And that more than that, the du Pont Companies and the Hazard Companies would be left without any business so far as the mining of coal went, that was your judgment at the time, wasn't it? A. Well, I had that feeling, that there was that danger; I didn't know.

Q. And Mr. Colvin and Mr. Eugene du Pont shared that apprehension with you, didn't they?
3641 A. I don't know what Mr. Eugene du Pont's—I don't know that he ever expressed himself on the subject. Mr. Colvin came to Terre Haute and we called on the people.

Q. I know, but they shared your apprehension? A. I don't think that was discussed at all.

Q. Can you state about when Mr. Rood got the Indiana Powder Mill started so that he could furnish powder? A. I think it was about October or November, 1897.

Q. You also, on your direct examination, stated
3642 that prices went down as low as ninety cents during a period of the operation of the Indiana Powder Company; and that in 1902, January, I believe it was, they were again raised from 90 cents to $1.25. Now the $1.25 was the price which had prevailed before Mr. Rood had started his mill, was it not? A. Yes.

Q. Now did you mean by that statement that at no time during the operation of the Indiana Powder Company's Mill there was a general price of 90 cents in that district? A. No, not general over the district.

Q. What was the general price, the lowest general price? A. All of the district that was not reached by Rood, where Rood did not compete the general price was $1.25.

Q. You misunderstood me, I am speaking of

the general price now apart from Rood's district. You say the 90 cents price was the general price, what was the generally low price there in his district? A. In his locality 90 cents was the low price.

Q. I know. I understood you to state just now that that was not a general price in his district. A. Not to every one I think.

Q. Well, it is a fact, is it not, that that was only an exception price in a few instances, is not that true? A. I don't know how general, it was in Illinois and Indiana, in Mr. Rice's territory. 3644

Q. The fact is, that the minimum price that powder went to in that district, during those years was from $1.05 to $1.10, wasn't it, Mr. Waddell? A. Yes, there were sales made at $1.05 and $1.10 and at 90.

Q. That hardly answers the question, Mr. Waddell. A. I could not tell you whether there were more sales made at $1.10 than at $1.05 or more at 90 cents than at $1.05. I could not tell you the proportion of the sales.

Q. This operation was right in the midst of your territory, wasn't it, Mr. Waddell? A. Yes, and I was excluded, almost, from that territory by Mr. Rood's organization. 3645

Q. Well, didn't you keep very closely in touch with the trade during that operation? A. Yes, I came in contact with it, but I didn't have much trade in that locality.

Q. And do you mean to say that you can not remember so recent a period as that, what the prevailing low price was right around your office, Mr. Waddell? A. Well, it was not right around my office, but I can remember it very well, that the price, the low point, was 90 cents.

Q. I understand that, but what I am trying to

get at is this: Was it not true that the prevailing low price was not in the market 90 cents, but, on the contrary, the price was $1.10 and $1.05? A. That would be impossible for me to fix that, because F. S. Peabody was the agent of Rood for southeastern Illinois; he controlled a great number of mines and his price was 90 cents. Now, how far Peabody sold, I don't know, nor what price he sold at.

3647 Q. He was Mr. Rood's agent? A. Well, he controlled, with Rood, at 90 cents and sold the powder for Rood in eastern Illinois.

Q. Now, when Mr. Rood resigned from your employ and entered upon this enterprise there, he was well aware of the fact that the powder companies had gotten together under this 1896 agreement? A. Yes.

Q. And had established the price at $1.25? A. Yes.

Q. And he relied upon the fact that they would maintain that price at $1.25 under that agreement,

3648 did he not, in order to make his success? A. No, I think not. Mr. Rood had a better arrangement than that.

Q. By the "better arrangement" you refer to the fact that he made an arrangement with the coal operators whereby they were to take stock in his mill? A. He had a contract with the stockholders. The Indiana Powder Company had a contract with its stockholders, Rood told me, for ten years, but it developed later that it was for five years, to take all of their powder supplies from the Indiana Powder Mills at $1.10 a keg delivered, regardless of any price that might be quoted them by others.

Q. That is, Mr. Rood went to a very substantial number of men who were operating coal mines in

that district, and made arrangements, written contract with them, did he not, to the effect that they would take all of their supplies from the Indiana Powder Mills at $1.10 for five years? A. That is with his stockholders according to the percentage --they took stock according to the quantity of powder they used, and it was based on 80 cents and 30 cents.

Q. And that was with a large number of important operators in that district, was it not? A. The best men in Indiana, yes, in the coal business.

Q. And thereby that powder trade was taken entirely out of the market, was it not, Mr. Waddell?

Q. Have you any knowledge on this subject except from hearsay, Mr. Waddell? A. Only what Rood told me.

Q. Don't you know that to be a fact, from your general knowledge of the trade there? A. About his contract?

Q. Yes. A. Oh, no; I only know what he had told me about his contracts, and I never saw it, and didn't know anything of it except his statement. 3651

Q. Didn't you know as a fact that these coal operators did take all of their powder from Mr. Rood's mill? A. They did not take any from me. I think that they did; I am pretty sure they did.

Q. Mr. Talley was the president of the company, was he not, Mr. Waddell? A. Yes.

Q. How long had Mr. Talley been buying powder from you theretofore? A. I don't think I ever sold Mr. Talley any powder. I sold the firm of Talley & Tennant some powder while they were in partnership, but that trade was taken away from me and given to Mr. Rice, Talley's trade.

Q. How long had Mr. Talley been a customer of

3652 the du Pont Company? A. I don't know; he was a customer of the Chicago office and I could not tell you what their sales were.

Q. Well, for a long period of years, to your knowledge, was it not? A. I think so, yes.

Q. And you knew he stopped buying, didn't you? A. Yes, I knew about that.

Q. Who was Mr. Minchel? A. Minchel?

Q. Yes. A. Mr. Minchel was the president of the Parke County Coal Company.

3653 Q. Had that concern been an old customer of yours? A. Yes.

Q. Did they stop buying from you? A. Yes.

Q. What other stockholders was there? A. Dane Ingle.

Q. Did he stop buying from you? A. Yes.

Q. What other one? A. Mr. Reish of the St. Bernard Coal Company at Earlington, Kentucky; Mr. Morris L. Sternberger of Jackson, Ohio, and Dugger & Neal.

Q. Did they both stop buying from you? A. All of them.

3654 Q. Who else? A. Dugger & Neal.

Q. Who else? A. Well, I sold occasionally to some other people. I didn't have the regular trade of the others.

Q. Now, do you mean to maintain, Mr. Waddell, that you personally do not know that those customers were buying their powder from the Indiana Powder Company's mill, immediately after they stopped buying from you? A. Well, I think I knew. I had the statement of Mr. Rood.

Q. You had a great many indications— A. —That was good enough for me at the time.

Q. You had a great many indications of it, did you not? A. Yes.

Q. And you so reported to your principals, did you not? A. Yes.

Q. It was well understood by every one concerned that that was the situation, was it not? A. I accepted the statements that were made to me in regard to it.

Q. And that was based upon your acceptance of that statement that you and your principals had so much apprehension about Mr. Rood's enterprise, was it not?

A. I believed that it would be a very formidable opposition.

Q. And you believed so for the reason that if he 3656
had made contracts such as he stated to you he did make, it would shut out that trade entirely from your office? Was not that the reason of your apprehension? A. Yes.

Q. That is so far as those particular operators and those particular coal mines, it would be a complete monopoly in the hands of Mr. Rood, wouldn't it? A. No, it was in the hands of the stockholders. Rood did not control very much of the stock.

Q. Well, the company. A. The Indiana Pow-
der Company—they made their own supplies. 3657

Q. That was your judgment at the time and that was the basis of your apprehension, wasn't it? A. Yes.

Q. And, furthermore, you realized that if no opposition developed to that enterprise, it was one that was very likely to extend, did you not? A. Well, I didn't know about that; it was a mere guess.

Q. That was your judgment at the time, was it not? A. Well, I think I expressed such an idea and possibility of that kind.

Q. During this period, this same arrangement was prevalent throughout this district whereby the operators bought the powder from the powder com-

panies and resold it to the miners, was it not? A. Yes.

Q. And the prices to the miners during this period were $1.75 per keg? A. Yes.

Q. Were they not? A. Yes.

Q. And therefore the profit of the operator was the difference between what he bought the powder at and this $1.75—wasn't that right. A. Yes, excepting bad accounts and so forth.

3659 Q. Therefore it did not necessarily follow from this arrangement that these operators had made with Mr. Rood and his mill, that the miners would get any benefit from it, did it, Mr. Waddell? A. No, they had no share in the profits of the mill; the stockholders got that.

Q. It was well understood that these operators were simply going to make their own powder and then go on and sell it to their miners at the same price, at $1.75 per keg. Was not that true? A. Well, I presume that is what they were doing.

3660 Q. Therefore the miner was the real consumer of powder under that arrangement, was he not, Mr. Waddell? A. He was the consumer.

Q. And the mine operator was a mere middleman between the powder company and the miners. Is that not true? A. He was a merchant, yes.

Q. Therefore, so far as that situation went, it was one under which the du Pont and the Hazard Company would either step out and give up the trade entirely or be forced to compete for the business by selling directly to those miners. Was not that the situation? A. They could have done either, yes.

Q. Well, they were given their choice between those two alternatives and those only, were they not? A. That was so far as the trade of the stockholders of the Indiana Powder Company was concerned, I presume they were.

Q. Well, I suppose again your position is that they should have left them alone and surrendered the trade gracefully. Is that your position? A. Yes, I think that would have been the wise thing to have done.

Q. What was the price at which the great Northern Supply Company sold powder to these miners? A. $1.25.

Q. And the price at which the Indiana Powder Company was selling its powder was $1.10, was it not? A. $1.75. 3662

Q. I know, to the miners, but from the mill to the operators, $1.10, wasn't it? A. $1.10.

Q. So, as between those two sales, the Great Northern price was fifteen cents more than the Indiana's price, wasn't it? A. That is, retailed by the single keg. Indiana's price was in carloads, 8,000 kegs; that is different.

Q. Then it would be, according to your testimony yesterday, it would be on an exact parity, because there is a difference of fifteen cents a keg between retail lots and carload lots? A. Exactly the same figure. 3663

Q. Do you know what the price was that the Indiana Powder Company charged for its powder to outsiders other than its stockholders at the beginning? A. It didn't sell any outside that I know of.

Q. When did they begin? A. Well, it must have been a year and a half, maybe two years, after they started in business, before they began to extend their business.

Q. Didn't you know as a fact that it was the intention at the time of those people to enlarge that mill? A. No, I didn't.

Q. Didn't you know as a fact that there were several other mills of the same character contemplated in various parts of the coal fields. A. I

knew I was sent to Terre Haute to establish a plant to oppose the Indiana Mills and I selected the site. Mr. Colvin looked it over and it was expected that we would build a mill there and fight Indiana.

Q. Did the Hazard build that mill? A. No, it was decided not to build it.

Q. Well, now, will you answer the other question. Did you not know at that time of several other enterprises contemplated by outsiders of the same character as Mr. Rood's? A. No, I never
3665 heard of one.

Q. You spoke yesterday just before the adjournment of some interview that you and Mr. Colvin had with some of these gentlemen who were interested in the Indiana Powder Company. When was that? A. I think it was—I think Rood organized his company about March, 1897, and it was a few weeks—maybe several weeks—after Rood organized that Mr. Colvin came to Cincinnati and called for me and we went over to Terre Haute and had that interview.

3666 Q. What was the purpose of that interview? A. Well, the purpose was to try and get fifty-one per cent of the stock of Indiana for the Hazard Powder Company, and we failed to do it.

Q. Did you make various arguments why that should be done? A. Yes, in the interview I was the spokesman. Mr. Colvin wanted to hold a reserve position so he would not be compelled to commit himself, and he asked me to do the talking, and I did it.

Q. Do you recollect when Mr. Rood resigned—I say, do you recollect when Mr. Rood resigned? A. He didn't resign until after he had established his plant. He did wrong in not doing so. He organized his company while he was still under pay from the Hazard Company. That is wrong.

Q. That is, he was traveling around ostensibly

selling du Pont and Hazard powder and in reality making contracts with these customers to help him build a powder mill, wasn't he? A. I don't know that he was making contracts; he had discussed the question with them and I felt he was wrong in that he didn't resign first, as I did.

Q. You say this contract system concerning which we have heard considerable was organized by that fall. Can you tell about when in the fall? A. Why, I would think about September of that 3668 year.

Q. That was about the time that you have stated that you went to New York to examine various forms of contracts that were being discussed? A. I don't recollect the date that I went; it was about that time.

Q. Did you assist in the preparation of those contracts? A. No; only they got my judgment.

Q. You went there and gave them your judgment about it? A. They asked my judgment and I gave it to them.

Q. Do you recollect who presented the form that 3669 was selected? A. There were, I remember, about four or five forms submitted by Mr. Colvin—he was on the committee to get up a form and he presented to me a form that had been furnished by the Miami Powder Company, or by Mr. Fay of the Miami and American, and another by the Laflin & Rand—I kn——

Q. I know; we know all that. My question was whether you know who presented the form that was adopted? A. I don't think any one did that I know of. I think it was a complex form gotten up from a number of others and made as short as possible.

Q. Now, is it not true that the coal operators themselves desired to have these contracts for the

supply of powder to their mines? A. They didn't know anything about it until we talked it to them.

Q. Weren't they solicited—hadn't they been for a long time to have contracts for future supply of powder, written contracts with your company? A. Oh, I think during the period when Chattanooga was independent, when we were making contracts. I had a few requests of that kind from some of them.

3671 Q. How long an arrangement did the coal operators usually make with their miners as to wage scales, Mr. Waddell? A. It was originally one year and it is now over two years.

Q. During this period in 1897, do you recollect how long it was? A. Over a yearly average at that time.

Q. Was it not true that the mine operators took the position that inasmuch as the price of powder entered into that wage scale for a year it was necessary for them to have a contract showing them how much they would have to pay for powder during that entire year? A. The rule has been with 3672 the price committees of the miners and operators to use powder—the miners to use powder for the purpose of raising their wages. They have always been willing to pay a high price for powder, an excessive price, knowing that there was a big profit to the operator in it, provided they could get the scale of wages up, and they have used powder in that way. The miner has always conceded that the profit on powder is excessive to the operator provided he could get higher rates per ton for mining his coal, and they have used powder as the means of pulling up their wages, and they are willing always to put that in. The price committees agreed upon that scale.

Q. I daresay that is true, Mr. Waddell, but my

3673

question was whether the fact that they fixed these wages for a year did not make the operators desirous of having written contracts for powder so that they would know how much they got to pay during the year? A. No, that was never suggested to me; I never heard of it.

Q. How is this coal sold? Is it sold on time contracts ordinarily? A. A good deal of it is, yes.

Q. How long term contracts are they? A. Oh, 3674
that varies according to the coal companies and market conditions; there is no definite rule.

Q. Well, a year or two? A. Might contract with a railroad to supply its engines for a year; I don't know what their arrangements were.

Q. Didn't the operators also take the position that it was necessary for them to know how much they had got to pay for powder, in order to figure on their contracts with these consumers for coal? A. No, oh no.

Q. Do you know about how many contracts, how large a proportion they had in 1902 of the total 3675
trade? A. In Illinois they had all of it under contract, one company or the other, I would occasionally hear of a new coal operator they didn't have a contract with it, but as a rule they would apply to me and I would call on an operator and he would say that "I want a contract in a year; come around in a year to see me."

Q. How large a proportion of the trade in the country? A. The contracts were mostly in the Central States, not much east of Pittsburgh and not very generally outside of the district, where we ordinarily had disturbance; there is where the trade was tied up.

Q. You say that all the trade in Illinois was tied up; have you any knowledge as to how much of it was in the whole country at that date, in 1902?

3676 *R. S. Waddell—Cross*

A. I think all of Indiana—practically every customer in the state. Occasionally we would be enabled to make a contract and we would have a special price trade that was equivalent to a contract. That was a cut price. That was special.

Q. Do you mean a lower price was equivalent to a written contract for a year or two; is that what you mean?

(Motion to strike answer sustained.)

3677

Q. Will you answer the question? Do you consider cut prices equivalent to a written contract for from one to five years? A. If the man gave me his word, I think it would be good as a verbal contract.

Q. Did it make any difference who the man was? A. Yes; generally a coal operator was responsible.

Q. Didn't you testify in the government case out of four million kegs of powder, sold in the United States, three million eight hundred thousand of it was under contract in 1902, all but 200,000? A.
3678 That four million kegs related to the basis that Mr. Moxham used in his speech as the basis for the contract trade. It is referred to in his speech that is in evidence.

Q. I understand. A. And there was a large volume of trade in Pennsylvania that was exempted from the advance, nearly the whole State of Pennsylvania, I think all the State of Pennsylvania; that part of West Virginia north of the Baltimore & Ohio Railroad; Maryland, and there was a very large volume of special price trade that I could—— Of course, I knew about, but the four million kegs was not the total consumption of the United States in powder by any means.

Q. Was not your testimony that of the four

million sold by the associated companies in 1902—four million kegs—that three million, eight hundred thousand of it was covered by these contracts? A. By the contracts that were scheduled there; yes.

Q. That was your testimony? A. Yes.

Q. Now, you have stated here on your direct examination that as soon as this contract business came into effect, you made contracts for all the customers of the Hazard and du Pont Companies, have you not—that is, in 1897? A. I began making them, and the Hazard Company instructed me to put in my applications as soon as possible for the privilege of contracting my trade. 3680

Q. I did not ask you that. A. I understood you——

Q. Read the question, please. (Question read.) A. I contracted with every one I could.

Q. Well, didn't you make this answer on page 1644: "A. I can answer that for the Hazard and du Pont Companies. The trade that was tributary to Cincinnati, which included Indiana, part of Illinois, Ohio, West Virginia and Kentucky, that was contracted with every customer that we had of any consequence, that is, that would take a carload or over per year." Was not that your testimony? A. Every customer that I could get to sign the contract. 3681

Q. You did not state here—you said every customer here of any consequence that would take a carload for a year or more? A. I meant that I had a few that would not sign, perhaps, but later on they did.

Q. They all signed eventually? A. Ultimately, I think I had all my trade under contract.

Q. So that they must have been between this and 1902, surely? A. Yes.

3682 *R. S. Waddell—Cross*

Q. Later you stated, after recess, that that was not exactly the situation, didn't you, Mr. Waddell, on your direct examination? Didn't you state this: "In cases where we failed to make contracts, a coal operator would not enter into a long contract for a long term, it was desirable to close his trade and make his trade permanent, and we applied to the powder companies for the privilege of making him a special price, and in many cases, in fact, most cases, that privilege was granted us and we
3683 made special prices." A. In most cases where we applied for them; but that was just as good as the contract with me, for it tied the trade up.

Q. Which of these situations were true. Did you have it all under contract, or didn't you, Mr. Waddell? You have made both statements here? A. We began contracting in 1897, in the Fall.

Q. Won't you answer my question? A. I did not make all the contracts in a day; we progressed.

Q. Which of these situations is true; that you had it all under contract or part of it under special prices? A. I think the major part of it was in
3684 writing. Occasionally, the contract would expire and the fellow would refuse to make another contract, and I would get a special price for him; it varied.

Q. Then your statement here, the other day, that you put every customer of the Hazard and du Pont companies of any consequence, under contract, was not correct, was it? A. Yes, it was.

Q. It was? A. Yes, it was under contract for a special price or under contract with a paper writing for a term of months.

Q. Oh. A. I had them either one way or the other.

Q. You meant you had some of them, verbal promises, to take powder? A. An oral contract is as good as a written one, if the man is good.

Q. Did you write this letter to Mr. P. S. du Pont while you were general sales agent at Wilmington? A. Yes; that is a summary of the Moxham speech.

(Paper marked Defendants' Exhibit A-146 and read to the jury as follows):

Wilmington, Del., October 22, '02.

Mr. Pierre S. du Pont,
Treasurer. 3686

Dear Sir: Referring to the list which I have today handed you, showing deliveries of powder on contract during a year, I have made from the list the following extracts:

Deliveries on expired contracts	403,658	kegs
Contracts expiring prior—		
to Dec. 31, '02	132,701	"
to June 30, '03	535,107	"
to Dec. 31, '03	445,257	" 3687
to June 30, '04	325,524	"
to Dec. 31, '04	173,243	"
to June 30, '05	185,800	"
to Dec. 31, '05	90,100	"
1906	48,597	"
	2,339,987	"
Deduct delivered on expired contracts	403,658	"
	1,936,329	
Total sales per yr., all companies	3,887,774	
Sold on specials & card prices	1,951,445	
(Equal to about 50%)		

3688 *R. S. Waddell—Cross*

You will note from this that about half of the Powder sold is delivered on contracts, and prior to June 30th next year contracts representing 667,808 kegs will expire.

Truly yours,
R. S. Waddell, G. S. A.

Q. Now, you took this data from these Moxham Exhibits 17 to 24, in the Government's case? A. In the schedules attached to his speech, yes.

3689 Q. And it appears from the figures that of the approximate four million kegs of powder, only about one-half of it was covered by contract instead of 3,800,000, as you testified; is that correct? A. Yes, there is a large territory outside of the contract field that I have already described. "Contracts covering Central States." It may have been one hundred per cent of the trade there.

Q. This says a total sales of all companies—that is approximately 4,000,000 kegs, the number you were testifying about in the government suit? A. Yes, sir, contract trade.

3690 Q. And of which you testified in the government suit 3,800,000 was under contract? A. Yes, and special price.

Q. And to which you testified to-day here that it was all under contract? A. Contract and special price. I gave the two there.

Q. Did you not testify that of that 4,000,000 kegs, 3,800,000 was under contract? A. Under contract and special price.

Q. Did you say contract and special price? A. I may have omitted whether it was oral or written, but it was in on the deal. We fixed the price for that; it was special. Whether the rebate was from a written contract or a rebate from a standard price. What is the difference? It does not make any difference whether it was oral or written.

Q. Your complaint here is that we made a great many long term contracts and thereby tied the trade up for one to five years? A. Yes, you have.

Q. That is your complaint and to substantiate it you have testified here and in the government suit that out of 4,000,000 kegs we had 3,800,000 in that condition, have you not? A. That was not in Illinois.

Q. Have you not so testified? A. I have testified what the government record states there.

Q. Does it not so state and have you not admitted it here this morning? A. Yes, it was all under contract. 3692

Q. Is it not true that only half of it was under contract from 1902 from your letter? A. Under written contract, yes. And the specials that were in the Moxham exhibits there.

Q. That is what you have been talking about all the time, have you not? A. The Moxham exhibit states specifically what is stated in the letter.

Q. It is very different from what you have stated in the testimony on several occasions, is it not? A. I think not. 3693

Q. At page 178, of the first volume of the petitioner's record, did you testify as follows: "Q. These are what? A. These are the lists of the contracts of all the powder companies in the Association, made up and prepared at our office, summing up the whole business. Q. Under this system? A. Under that system of contract, tying the trade up in contracts. Q. And what proportion, can you say, of the contracts of the United States, did it cover? A. About three million eight hundred thousand and some odd, out of four million kegs. Q. That is as of the date of 1902, is it? A. Yes. Q. October first? A. December thirty-first, I think we divided up to there. They were prepared for the December

3694 *R. S. Waddell—Cross*

nineteenth meeting, 1902." Did you so testify? A. Yes, and I furnished the schedule for it. I want to state that the government did not use the schedules, all of them. The schedule of special prices was omitted from the books for some reason.

Q. At page 887, did you testify as follows: "Q. In your former examination you testified that about December 19, 1902, the total volume of the contract trade of the pool companies amounted to about 3,800,000 kegs of powder. State whether or
3695 not this represented all of the trade of the pool companies at that time. I am speaking now as to the distinction between what you know, or remember, of the contract trade, and — A. No ;it didn't represent all of the trade of the pool companies. There was one special trade, special price trade, and that was in addition to that. There was quite a volume of it, and that was in addition to the 3,800,000 kegs. That was all of the contract trade of all the powder companies in the pool that had been assigned by the special and advisory committee." Did you so testify? A. That is the way you
3696 read and I must have testified that way, but the schedules I furnished them showed—I furnished them a copy of that du Pont letter there.

Q. Did you so testify, that is the question? A. I presume I did; I don't remember, I have no recollection about it.

Q. Consequently the schedule price that you are talking about is not then for these 3,800,000 contract trade that you are speaking about, is it? A. No, the schedule trade, not the schedule trade. No, the schedule there speaks for itself, the number of kegs, the contractor's names and all are right on those schedules.

Q. I dare say. A. Every customer is there and the number of kegs he took is named under that

column, in addition to that we have this special priced trade and I have furnished here the list of special prices to you so far as I had knowledge of them, or rather my son did.

Q. You will observe I am not speaking about what the schedules show, but what you testified to. Now, on this last occasion that I have referred to, did you not testify that this special trade was in addition to the three million eight hundred thousand kegs, of contract trade? A. That is the way you read it. 3698

Q. Is it not the way you read it? A. I never read my testimony. I never had the opportunity to read it and correct it in any way.

Q. Won't you spend a moment now reading this small part of it, at the top of page 887, and state whether you so testified, that question and that answer? A. I will take your reading of it. It states here that I testified to the total volume of the contract trade. That is written, and oral; but as the schedule that I furnished as per hat letter, and that special price trade, amounted to a total of 3699 about three million, eight hundred thousand kegs—that is correct.

Q. Is that what it says there, Mr. Waddell? A. That is Mr. — whoever asked the question there, and I stated here, no, it did not represent all the trade of the pool companies. (Witness examines document further). It seems from this reading that I testified the special price trade was in addition to the written contract trade. That is an error, because I laid before them the figures showing the opposite of that. He asked me if I could estimate what the additional trade would be, and I said no, I never figured that up; it was quite a volume. I think I have read that. That is familiar stuff.

Q. You speak of an error; do you mean an error

3700 *R. S. Waddell—Cross*

of the stenographer's, or an error in what you have stated, Mr. Waddell? A. I do not know where the error occurred. It was an eror evidently between my statement there, and the papers I laid down in support of it.

Q. It is exactly the same kind of a statement that the amount of trade that was tied up in 1902, that you have repeatedly made in this case, was it not, Mr. Waddell? A. No, oh, no.

Q. It is different now, is it? A. I had a list and
3701 I furnished you here a list of the contract trade in 1902, and you have produced about, I should think, twenty per cent of those contracts, but I know they existed.

Q. You knew that they existed to the extent mentioned in this letter, didn't you? A. To the extent mentioned in the Moxham list which I referred to you.

Q. Which is also mentioned in this letter and is 50 per cent of that trade, isn't that correct, instead of all of it? A. Fifty per cent of the contract
3702 trade were within written documents at a scheduled price less a rebate of approximately 50 per cent. The balance of it was at a scheduled price less the special allowance to a particular customer, to a particular powder company, and those contracts were oral.

Q. Then we understand each other now. So far as tying the trade up for a long period of years in 1902, that then applies to not more than fifty per cent of the trade, that is a present statement, isn't it? A. No, you have got that wrong. The contract trade was probably not more than half of the total trade of the United States, with contracts. The contract trade applied especially to Central states where the old disturbed districts were located. Now, outside of that there was a vast volume of trade,

there was a big trade in Pennsylvania that was not contracted.

Q. Not included in the association— A. Pardon me. That was not contracted, either oral or written. Now, of trade that was contracted, a total of 3,800,000 and some odd kegs, as shown by the schedule, and as shown by the list, footing the columns on this list I have given you and the correspondence with that letter—about half of that trade was in written contracts. The other half of it was special prices, oral contracts. 3704

Q. Selling from day to day on special prices? A. No, it was more than that.

Q. Now, then, speaking about this Pennsylvania trade, if you added that in, which was not governed by the association at all, it would have been 7,000,000 kegs a year instead of 4,000,000, wouldn't it? A. It was governed by the association.

Q. Would it have been 7,000,000 kegs instead of four, if you had counted that in? A. The total volume of trade in the United States I should say in 1902 would be 7,500,000 to 8,000,000 kegs, and of that total, about half of it was under written contracts and special prices—— 3705

Q. Very good? A. —and as between the two it is about equal whether it was all written contracts.

Q. And about 25 per cent of the total trade then was under written time contracts? A. Yes, and all of that was in the Central States, then, or nearly all.

Q. It was in the places indicated on these exhibits wasn't it? A. Yes, sir; nearly all of it was there.

Q. Was there anything to prevent a competitor from taking that trade at the end of a written contract? A. Yes, sir.

Q. What? A. They began about sixty days before the expiration of a contract to seek renewals,

and there was generally a cut in the price as an inducement for the renewal of the contract by the company, and by the time a competitor got around, a contract had been made for renewal before the old one expired, and it was my experience with them all.

Q. Yes, and of the exhibits that you spoke of, the first one, which covered about 25 per cent of the amount involved was for deliveries on expired contracts that had not been renewed, were they not?

3707 A. Yes, customers that went right on when the contract expired; they hunted the fellow along until they succeeded in landing him.

Q. There was quite a lot of them, in that particular instance, all expiring during the six months preceding this exhibit which had not been renewed, during the sixty days previous to their expiration, is that correct? A. A good many of those; you see Rood sold out about the first of 1902.

Q. Yes. A. And a good many of those contracts,

3708 of those people who had those contracts, had been buying from Rood, and we held them along under those Rood contracts; we could not get them renewed.

Q. I understood you to say a few minutes ago that this renewal was always attented to about sixty days before or during sixty days preceding the expiration of the contract. Now, regarding this amount of trade in the first exhibit, that was true, was it? A. The first exhibit, I do not know what you mean.

Q. That exhibit, those Moxham lists, that shows deliveries on expired contracts. Those contracts had not been renewed during the sixty days previous to their expiration, had they? A. We were not renewing them.

Q. Now, will you explain to the jury, Mr. Waddell, just how it was that that amount of powder mentioned in that first exhibit, that was delivered on expired contracts, was in any way tied up so that it was not open to free competition in 1902? A. Just went right along under the old contract, and delivered powder under it, just the same as it was in the others.

Q. And the customer, I take it, from your statement, was helpless. He was forced to take it? A. No, he was not; but he did take it. 3710

Q. Yes, he did; he may have thought it was good powder, that might have been his reason, might it not? A. No; he was getting it at a rebate, of 15 or 25 cents a keg below any other powder on the market.

Q. Was there any legal compulsion on his part to take any of that powder? A. No; I do not think there was.

Q. And if you had come in with your Buckeye powder and convinced him that it was as good or better, and had made an equal price, you had a chance at that trade, hadn't you, Mr. Waddell? A. 3711 You will have to point out to me a single expired contract that was not renewed before my mills went into operation. In the State of Illinois, I don't know——

Q. (Interrupting) I will point out to you Exhibit 17 in the Government case; I do not know what number it bears here. I will ask you to look at it, and see if there are not one, two, three, four pages of deliveries on expired contracts there? A. This was in 1902.

Q. I understand, December, 1902. A. Yes; there are deliveries in 1902 on expired contracts, the first exhibit.

Q. The first exhibit, No. 17? A. Yes, sir.

Q. Those deliveries, amounting to one hundred and thirty-two thousand, seven hundred and one kegs, as stated here? A. Yes; in about ten States, and extending over a year or two.

Q. Well, during that period, that trade was open, wasn't it, Mr. Waddell? A. In 1902, yes.

Q. At that date? A. Yes; but it may not have been open in 1903.

Q. Won't you further explain to the jury why trade that was under a special price, that is prices
3713 made below the schedule on a verbal contract, was not open to competition. A. Certainly it was not.

Q. Why wasn't it? A. A man's word was good, I thought. I guess the Powder Company was good for it.

Q. Do you mean a man made a verbal contract to take his powder for five years at that price? A. I do not know that he made it for five years or five months, or a year. Whatever the arrangement was he made. When I got a special price I went to a man with it, and I just didn't give him a
3714 special price on a car load of powder. I was not selling a car load of powder.

Q. You know, as a matter of fact, those special prices, a man would take at that price as long as he desired, and then quit, don't you, from month to month, that is what the special price was, wasn't it? A. The special price was given to, say, the Hazard Powder Company, and to no other powder company, and I knew that there was not going to be any competition so far as the associated powder companies were concerned, with that man's trade.

Q. Very good. A. And I knew I was safe with this business when I made a special price, and that was in lieu of a special contract. For some reason, they did not want to make a contract.

Q. You knew he was taking his powder at that

price from month to month? A. They were sending orders in.

Q. And he could quit whenever he got around to it, couldn't he? A. I presume he could. The order was not for any definite number of kegs or for any term.

Q. You had a list of these contracts and could tell when they expired and could solicit the business of these customers either 60 days before or any other time? A. I had a printed list, yes, sir. 3716

Q. These Moxham exhibits? A. Yes, sir.

Q. You have stated something about these contracts being confidential. What did you mean by that? A. They had a clause in them that the existence as well as the terms of this contract should be kept confidential.

Q. Did they all have that? A. All that I made out, did, and I made a good many of them.

Q. Well, what is the particular objection to that. Do you think they ought to have been published somewhere? A. No; but when I entered the field and you had changed your rebates, as you did all 3717 during 1903 and those contracts were confidential, I did not know what your prices were.

Q. Now, you testified the other day that you kept in absolute contact with all contract prices from 1903 to 1908, knew what the renewals were, and that they were all renewed at lower prices whenever a contract expired. Didn't you testify to that a week or two ago? A. That is what I testito, and that is the fact.

Q. So you did know what the prices were? A. Well, I had a man's statement, yes, sir. They went down.

Q. I call your attention to a form of one of these contracts that you produced, I think, in the Government suit, and ask you if it was a form that

went into this contract system that you are describing as a part of it? Is that the kind of contract you are talking about? (Hands paper to witness.) A. Let me explain this form fully.

Q. Well, let me read it first. A. That is one of several.

(The paper was received and marked Defendant's Exhibit A-147.)

3719 Mr. Button (reading): "This contract, made between E. I. duPont de Nemours & Company, of Wilmington, Delaware, first party, and ..... of ..... second party.

Witnesseth: That first party hereby sells, and second party buys, all the black blasting powder, in kegs, 25 pounds each, required for use in the mines owned or controlled by second party, as noted below, for the period of ..... from this date, at the current car load price established by
3720 the first party, at the location named, at the time of receipt of order, the present car load price being $.....per keg.

The following conditions are mutually accepted:

(a) First party agrees to allow second party a rebate of ..... cents per keg on powder purchased on this contract.

(b) First party agrees to allow second party the actual car load freight charged from shipping to delivery points.

(c) Terms are sixty days, or 2% discount for cash if remitted within ten days from date of invoice.

(d) Second party agrees to buy from first party in car load lots of kegs of 25 pounds each, all the black blasting powder required by it for the following mines:

Name.	Location.
.....	.....
.....	.....
.....	.....

or for any other mines that may be acquired by the second party, in the same district, during the time of this contract. 3722

(e) It is agreed that powder furnished under this contract is for consumption of the second party only, and not for sale, except to its own miners or employees. It is agreed that a violation of this clause gives to the first party the option of cancellation of this contract.

(f) The first party may furnish, and the second party will accept under this contract, powder of any standard brand, make and quality. 3723

(g) The first party is not to be responsible for delays caused by strikes, accidents or causes beyond its control.

Dated at 190

E. I. du Pont De Nemours & Co.
By ....."

Q. That was the kind of contract they were making for furnishing powder, wasn't it, Mr. Waddell? A. No. That was a contract that was gotten up as an improvement by Mr. Moxham on the old form

of contracts that we had used prior to that time. He thought he could get a contract that could be enforced in the courts, and that is his judgment of it.

Q. Where did you get that form of contract? A. They were printed.

Q. Where did you get it? A. I think I had it at Wilmington. They were sending them broadcast all over the country.

3725 Q. You remember you furnished it in the government suit? A. Yes; all of our salesmen had them.

Q. Here is a contract that was made in 1900 before this change. Is that the ordinary form of contract under which this system was carried out? A. Yes, sir; this one was one of the forms. We had four or five forms. That has the soda clause in it.

Q. This is Exhibit 1246 (166), already introduced. Let's see what the difference between this and the other is. (Reading.)

3726

MEMORANDUM OF AGREEMENT, entered into this 24th day of May, 1900, by and between the E. I. duPont de Nemours & Co., of Wilmington, Delaware, and The Princeton Coal & Mining Co., of Princeton, Indiana, party of the second party,

WITNESSETH: That the party of the first part hereby sells and the party of the second part hereby purchases at $1.25 per keg of 25 pounds each all the supply of Blasting powder to be used at the mines owned by the party of the second part, located at Princeton, Indiana, from May 24th, 1900, to May 23d, 1903, inclusive.

It is understood that this contract car-

ries a rebate from the regular carload delivered price of 15c per keg, and shall extend to any mines which may be acquired by the party of the second part during the life hereof, particulars of which are to be furnished by the party of the second part to the party of the first part, at the same rebate from the delivered price for the district in which said newly-acquired mines are located.

It is understood that powder furnished 3728
under this agreement is intended for consumption of the party of the second part only and not for sale except to miners or employees of the party of the second part. Deliveries are to be made in carloads of not less than ..... kegs. Terms, sixty days, or two per cent discount for cash within ten days from date of invoice.

It is agreed that if during the time covered by this agreement the party of the first part should make a less price than above 3729
named, under similar conditions, in the district in which the powder hereby contracted is to be delivered, it will give to the party of the second part the advantage of such less price on deliveries taken while the less price is in force.

It is agreed that this contract is based upon the cost of Nitrate of Soda not exceeding $1.80 per 100 pounds in New York City current funds, and that should the market price advance beyond that sum, the price made in this contract shall be advanced at the rate of one cent per keg for each five cents per 100 pounds advance in the price of Nitrate of Soda, to apply as indicated on

all deliveries made while the price of Nitrate of Soda exceeds $1.80 per 100 pounds.

It is agreed that should occasion require, the party of the first part shall have the right to supply under this contract Blasting Powder of any standard brand, make and quality.

Witness our hands and seals,

Princeton Coal & Iron Co.,
3731 Pr L. J. Oswold, Prest.,

E. I. du Pont De Nemours Co.,
Eugene duPont, Pt.

Q. That is the same as the other one with the exception of these two clauses, with regard to making a lesser price in the same district under similar conditions and with regard to the nitrate of soda clause, isn't it? A. Several changes in the form.

Q. But, about this lesser price named under similar conditions in the district where it was delivered—— A. The guarantee, yes.

3732

Q. That means that if the du Pont Company itself sells to other customers in that district? A. Yes.

Q. This customer shall have the advantage of that price? A. Yes.

Q. And this soda being the chief ingredient in blasting powder, do you see anything improper in the provision that the price should advance if soda advances? A. About 90 per cent. of my customers would not sign a contract of that kind with the soda clause in. They said they were not in the soda business, and did not keep up with the soda market, and they wanted that clause out of it.

Q. Very good, but if they consented to sign it, is

there anything obnoxious in that kind of a clause? A. I thought it was all right.

Q. Now, this is an ordinary contract for the furnishing of a stated amount of powder, isn't it, Mr. Waddell? A. A time contract, yes.

Q. You say there are other forms. Is this another form made in March, 1902, Exhibit 1246 (167), already in evidence A. This is another form; Moxham's is an improvement upon this form.

Q. Now, I would like to see what there is in this contract that is improper, Mr. Waddell? 3734

> This agreement, made this 1st day of March, 1902, by and between E. I. duPont de Nemours and Company, of Wilmington, State of Delaware, First Party, and the Reincke Coal Mining Co., of Madisonville, Kentucky, Second Party hereto.
>
> First party agrees to sell and furnish to Second party all the Black Blasting powder it may need for a period of one year from date hereof, for consumption in the 3735
> mine now owned and controlled by it and such mines as party of Second part may acquire during the life of this contract. The mines covered hereunder being endorsed hereon.
>
> First party agrees to guarantee Second Party against any lower price made by itself in the same district under similar conditions. Second Party agrees to take from First Party all the Black Blasting Powder it may need and consume, receive it in carloads of 400 or more kegs and remit for same in sixty (60) days from date of shipment, or less 2 per cent for cash in ten (10) days from such date, delivered at the near-

est railroad depot to the mine or mines covered by this contract.

It is further Understood and Agreed:

1st. That should occasion require, the First Party supply and Second Party will accept, under this contract powder of any standard brand, make and quality.

3737 2d. That there shall be allowed the Second Party on all powder furnished it by the First Party a rebate of twenty cents per keg from the current price of carload quantities to the general trade, as established by the First Party in the districts named at the time of receiving orders, provided that current price, less the rebate above stated, does not reach a figure below the rebate price under this contract, but should the current price fall below the present rebate price, as stated, then the Second Party shall have the
3738 benefit of all current prices that may be made by the First Party.

The mines understood as now owned and controlled and covered hereunder with the current price, being as follows:

The Reinecke Coal Mining Co., Madisonville, Kentucky, $1.30.

3d. That should the First Party be unable, from any cause beyond its control—such as explosions, strikes, accidents—to furnish powder of its own make, then, for the time being, the Second Party may purchase its powder wherever it may find it convenient, the First Party being freed from obligations in such transactions.

The terms and conditions, as well as the existence of this contract, to be confidential.

The Reinecke Coal Mining Co.,
Sec.

E. I. du Pont De Nemours & Co.,
T. C. duPont, President.

Q. Now, so far as the form of these contracts go, Mr. Waddell, what is there that you think is improper? A. There is no—the main purpose, the 3740
main purport of the contracts, all of them are the same—every once in a while the powder companies would pick up something that had been omitted from the form. I had about three hundred printed in Cincinnati, and got notice to destroy them, and have others printed and put in "current funds of New York," or something of that kind; just a little clause.

Q. Then, so far as the form itself goes, they were ordinary contracts, were they not? A. This general form was carried all through all of them. 3741

Q. I say they were ordinary commercial contracts, weren't they? A. Yes, but that one——

Mr. Abbott: If your Honor please, I object to that, upon this theory: This witness is asked to state what were ordinary commercial contracts. That opens up another field. We have not gone into anything of that kind. We do not know whether this witness is an expert on ordinary commercial contracts or not.

The Court: I think it is objectionable.

Q. I will put it this way: Did you intend to state on direct examination that there was anything objectionable in the form of these contracts, confin-

ing yourself to the form? A. Well, the—what particular contract?

Q. Take these two? A. I thought some of them ought to have been a little different. We differed as to the form. We used all the forms, five or six different forms, changing from time to time. I did not always like the form that was given me; when it had the soda clause in it I had to fight with the operator, I could not get him to sign it.

3743 Q. That is not exactly what I mean, Mr. Waddell. Did you intend to testify there was anything objectionable in the form of these contracts, so far as being in restraint of trade, and legal operations were concerned, on your direct testimony?

A. I have told you that the form was merely the carrying out of the system that had been adopted to tie up the trade.

Q. My question is, whether there is anything in the form of the contract itself that you object to on these grounds? A. No, it was merely the expression of the system that we had. The wording of

3744 them changed.

Q. Is this matter concerning which—I would like to read you these statements from your complaint, Mr. Waddel. (Mr. Button here read to the witness Section 11, page 22 of the complaint). Did you give your attorneys the information on which that was based, Mr. Waddell? A. Yes, and I will be glad to give it here.

Q. You say that the defendants circulated false and damaging statements in regard to the capacity of your mills? A. Yes.

Q. Did you write this letter, Mr. Waddell. (After argument.)

Mr. Button: (Reading) "April 26, 1897.
"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

"Dear Sirs: I attach herewith copy of "telegram sent you this date. From the "assemblage of men from all parts of the "country who are interested in these mills "as stockholders, namely, Jackson, Ohio, "Oakland City, Indiana and Earlington, "Kentucky, I infer that Mr. Rood is gen- "eral organizer of the capital. They are his "personal friends. He tells me the organ- "ization was completed on March 26th.

"I enclose you clippings from the Indi- 3746 "anapolis papers, through which I brought "out the subject. Mr. Rood has not men- "tioned the subject to me, although at our "office up to 3 P. M. to-day. When the sub- "ject was called out by the publication in "the papers, he then handed me copy of his "resignation, which he says was mailed to "Mr. Colvin yesterday. Is it your wish that "we continue Mr. Rood's services or release "him at once? It is a matter of profound regret to this writer that one of our force 3747 "should be associated with the competitor, "and I do not know but it would have been "best for us to have sacrificed preferences "and to have entered into a contract with "Mr. Rood on January 1st, binding his serv- "ices for a term of years. Have you any "suggestions to make as to who shall take "Mr. Rood's place on the road? If not, I "will canvass the subject from our stand- "point.

"Do you not think it would be wise to "remove a portion of the Phoenix plant, or "some other mills, to the vicinity of Terre "Haute, and meet this opposition on the "'dead level'? It seems to me that the only "way for the Powder Associates to defend

"against continual inroads of this charac-
"ter is for them to centralize their business
"within smaller forces, and instead of main-
"taining a half dozen agencies, limit the
"number and decrease the general expense,
"sacrificing prejudice for prosperity.

"Truly yours,

"(H) R. S. WADDELL, Agt."

Clippings in another enclosure.

3749 The telegram enclosed is dated April 26, 1897.

"E. I. du Pont de Nemours Co., Wilming-
"ton, Del.: Of new company Tally is Presi-
"dent; Minshall, a capitalist, is Secretary;
"Stoernberger, David Ingle and Atkinson
"of St. Bernard Coal Company are stock-
"holders, with other coal operators near
"Terre Haute. Rood under contract to
"them for five years; has mailed resignation
"to Hazard. Stockholders claim output
"marketed for five years. Claim organiza-
3750 "tion is for mutual supply of stockholders."

Q. Now at the time you wrote that letter, Mr. Waddell, were you still feeling that Mr. Rood was doing what he should do in this matter? A. I felt that he had an absolute right to go into the powder business if he desired to do so. I felt that he was wrong in organizing the company while still under pay in my office.

Q. I recollect you to have testified last night that you went to New York and did the best you could to make a contract, to continue Mr. Rood with you for several years and were unsuccessful? A. That was right, January 1st—about January 1st.

Q. And you state here "And I don't know but what it would have been best for us to have sacri-

ficed preferences and to have entered into a contract with Mr. Rood on January 1st, binding his services for a term of years." A. Yes, I think that would have been a wise thing to do.

Q. I know, but is not that inconsistent with your statement that he had been trying to get such a contract made? A. Why no, I understand that.

Q. Whose preferences were you referring to? A. Colvin's, he preferred not to make contracts, he notified me he would never make another contract and then he turned around and made a contract 3752
with me.

Q. That is what you meant by that statement there, is it? It was Colvin's preference, he didn't want to make anything, make any contract at the moment.

Mr. Button: Mark this.

(Telegram just read marked Defendant's Exhibit A-149.)

Q. Did you write this letter in your own hand- 3753
writing, April 28th, 1897 (showing witness)? A. That is my letter.

(Following telegram and letter marked Defendant's Exhibits A-149 and A-150, and read to the jury).

April 26th, 1897.

E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Of new Company Tally is president; Minshall, a capitalist, is secretary; Stoernberger, David Ingle and Atkinson of St. Bernard Coal Company are stockholders, with other coal operators near Terre

3754 *R. S. Waddell—Cross*

Haute. Rood under contract to them for five years; has mailed resignation to Hazard. Stockholders claim out-put marketed for five years. Claim organization is for mutual supply of stockholders.

Cincinnati, 28, April, 1897.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

3755 Dear Sirs:

I cannot add any information to what I have written about the "Indiana Gunpowder Co." but can confirm all I have written and that Mr. Rood claims he is under contract with the new Co. for 5 years; that the coal companies whose officers take the stock have contracted to take the output for 5 years, and Rood says it is not their intention to seek much outside trade.

Now, as to the method of meeting this case: Your policy has not been outlined but I believe the most
3756 wholesome lesson would be to institute the methods of Shamokin, Pa.—Erect a mill by one of the companies near Terre Haute—about the junction of two railroads then run a powder wagon through the villages of Carbon, Coal Bluff, Fontanet, Rosedale, and other mining centers owned by these stockholders and offer at retail for cash at $1.00 per keg. These coal companies have entered into a contract with a rival company to confiscate the trade of other powder Cos.—and the price should be fixed so that the coal operators having decided to monopolize the powder trade should be made to part with their large profits on sales to miners. Later the price can be extended to Ayrshin (D. Ingli's mines) Jackson (Sternberger mines), and other stockholders locations, if deemed advis-

able. These coal operators could not continue to charge miners $1.50, $2.00 and $2.50 per keg when the retail price is $1.00 and the odium for low prices would attract to the opposition mill. Could not the association own this opposition mill and thus share the results? It would be better to run it under a separate charter like Marcellus or Anthracite or a company without a long-time reputation. I know Martin, Tally and particularly David Ingle love the $1.00 or $1.50 profit they make on a keg of powder and believe they should suffer as 3758
well as the older manufacturers of powder.

A great deal of the powder would be sold to the miners by the new Co., but the prices would be such as to make the powder branch of the coal trade very unsatisfactory.

This might drive them from home but in that event they would be nearing the Iowa, Illinois and Ohio mills.

It seems to me they have taken in the Indiana mines who use coarse powder and have included Jackson, O., to work off the FFF. I cannot say 3759
how many are interested, but would think they would include Keeler, Dugger & Neal and possibly Brazil Block Coal Co.

A low retail price would do more to deter other combinations of coal operators than anything we could do, should other mills be under consideration.

I offer this as a suggestion for I do not like to patiently accept the situation of having 50 to 75M kegs of powder trade contracted out of our hands without protest.

Truly yours,

R. S. Waddell.

Q. This was written two or three days that you

learned Mr. Rood embarked on this enterprise? A. Yes, sir.

Q. So you were the original suggester of the proposition of selling powder to the miners? A. Not the original suggester, but I was recommending to my principals that they follow the methods that they followed in Pennsylvania.

Q. That is one of the things you are suing us for now, is it not? A. No.

3761 Q. It is not? A. No, this is a different proposition.

Q. On May 4, 1897, did you send to the du Pont Company a list of the coal operators whom Mr. Rood had taken away from you by this operation (handing witness paper). A. That is my letter, I presume I did.

Mr. Button: Mark it please.

(Same received in evidence and marked Defendants' Exhibit A-151.)

Mr. Button: (Reading) "May 4, 1914,

3762 Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: On receipt of telegram from Hazard directing that we accept Mr. Hood's resignation as of April 30th, I could not reach him until Monday morning. I then released him with the request that he remain a day or two at our office to go over the books with a stenographer and bookkeeper taking notes and analyzing each account. They will finish this work to-day. This will enable us to correspond and collect the accounts without reference to Mr. Rood in the future.

I had the instructions of the Hazard office to arrange for necessary travelling through our office force. F. J. Waddell and this writer have divided the territory. He

will take Eastern Ohio and West Va. I will take Western Ohio, Indiana and Illinois Fred is this week in Kanawha Valley. Any matters arising in the Southern territory will be held over until he returns as I am not so familiar with that work as he is. The same can be said of the Northern work while I am absent.

I discussed the new Powder Co. very fully with Mr. Rood. The following are the stock- 3764
holders.

Mr. Minshall, Terre Haute, Ind.
J. S. Talley, Terre Haute, Ind.
Joe Martin, Rosedale, Ind.
Capt. Zimmerman, Brazil, Ind.
Mr. Dugger, Bloomington, Ind.
D. Inglis, Oakland City, Ind.
M. L. Sternberger, Jackson, O.
James R. Rash, Earlington, Ky.
Mr. Atkinson, Earlington, Ky.

Mr. Talley is President, D. Ingle, Vice-President, Mr. Minshall, Treasurer, Mr. 3765
Reed, Secretary. None of the force receive any pay except Mr. Rood who has a contract for five years at $6,000.00. I think he has swelled the last amount a little, say—about $2,000.00. This contracts or satisfies the trade of:

Coal Bluff Mining Co.,
Chicago & Indiana Block Coal Co.,
Western Indiana Coal Co.,
and other mines controlled by Mr. Talley.

Parke County Coal Co., controlled by Messrs. Minshall and Martin,
Otter Creek Coal Co.,
Brazill Block Coal Co.,
Ten mines controlled by Mr. Zimmerman.

Dugger & Neal mines, controlled by Mr. Dugger.

D. Ingle mines, controlled by Mr. Ingle.

Superior Coal Co., Jackson and Wellston, O., controlled by Mr. Sternberger,

St. Bernard Coal Co., controlled by Atkinson and Rash.

There is considerable trade in the neighborhood of Terre Haute and Brazil that is not touched by the new company and with
3767 which Rood says they will not interfere. This is a good promise for the present when they have no mill; it is worthless for the future.

There are probably 18 or 20 other companies in the portion of Indiana, most of whom are tributary to this office.

Mr. Rood states that he was not interested in the organization of this company; that three of the men came to him and asked if he were open to a proposition and made
3768 the offer. He states a man from the East —a practical powder maker, will have charge of the mills. I inquired if it was Mr. Taylor and he replied that it was not. He states that the man came here about six years ago for the same purpose, a site was then selected, but the scheme was abandoned. The company expects to make powder for their own use when they can do so at a profit, when they cannot do so they will buy it and stop the mills.

I would like to look the ground over more carefully and study the situation in all of its lights and before making any final recommendation as to the methods for meeting this competition. I know all the parties very well and am friendly with every one

of them. Mr. Minshall passes for a millionaire, and I guess he is worth it. Mr. Atkinson is also a rich man and the others are all able to own or double their stock.

I do not think Mr. Rood is entirely free from influence in connection with the organization of this company, at least, in securing some of the members. Truly yours,

R. S. WADDELL, Agent."

3770

Q. So at this time you were making suggestions pretty actively as to what ought to be done to Mr. Rood's enterprise, were you not Mr. Waddell? A. I served the du Ponts, and the Hazard Companies with my whole heart so far as I was able and did my duty at that time.

Q. The point is I understood you to testify some days ago that you never made any recommendations or suggestions on these matters except as was requested. Didn't you so testify? A. No, I did not say that in—not in that connection, no; I constantly suggested and discussed matters and when they asked my opinion I gave it freely.

3771

Q. You were considerably stirred up over this Rood proposition in May, 1897, weren't you? A. I regretted very much that Mr. Rood should act as he did in leaving my office and doing this work prior to his resignation. I felt it was a wrong towards me. I didn't blame him for going, but he didn't do it in the right way.

Q. Did you write these further suggestions in May 9, 1897, about that suggestion (handing paper to witness). A. That is my letter.

Q. And is this one of May 17 (handing witness)? A. Yes, sir, that is my signature.

Q. And another one of May 17, in fact two, one to the du Ponts and one to the Hazards (hand-

3772 *R. S. Waddell—Cross*

ing paper to witness). A. They are required to send duplicates to the companies on important letters.

Q. These letters, too, are duplicates, are they not? A. They are.

Mr. Button: I would like to have them marked.

Mr. Abbott: These are duplicates?

Mr. Button: These are duplicates, one to
3773 the Hazard and one to the du Ponts.

(Same received in evidence and marked Defendants' Exhibits A-152 and A-153.)

Mr. Button: And this one of May 9th.

(Same received in evidence and marked Defendants' Exhibit A-154.)

Mr. Button: And this one.

(Same received in evidence and marked Defendants' Exhibit A-155.)

Mr. Button: (Reading) "May 9th, 1897,

Messrs. E. I. du Pont de Nemours & Com-
3774 pany, Wilmington, Del.

Dear Sirs: I have written you several letters in regard to the Indiana Powder Company, and have one or two more suggestions to make. I am not yet prepared to finally recommend the best plan, but will talk with Mr. Colvin who is due here to-morrow.

My father and I were engaged in the coal business a number of years, employing about four hundred miners. No one could ever hope to sell those miners powder, but might sell a few, possibly twenty per cent. If the price were cut very much, it would in time cause dissatisfaction with the others and the result would be a strike. The continuous complaints from committees waiting on an operator renders his business very

unpleasant, and long continued extortions only makes the strike more severe when it occurs. While outside competition could not sell the miners of Fontanet, Rosedale and others, they would fix a price in time at which the operator would have to sell, and that would be all the better for the outside competition because if the losses were heavy, the coal operators, who are stockholders in the powder mill, would have to stand the loss. The only objection I see to any Powder Company agreeing to a low price, is that an odium would attach to that brand, which would be spread among other operators in other fields. If all brands were retailed at the low price at Terre Haute, then it would be said that the 'Powder Trust is trying to crash out our little enterprise' and there would be a disposition to stand by the small concerns in all other coal fields. That would spread the difficulty to other states. I think some one of the outside mills, having no reputation, should make the powder and bear the odium. This would enable our office to say that the new mill at Terre Haute had just shimply started up the opposition that we had quieted and this outside brand had come in and were getting up a very bad state of affairs at Terre Haute; that the Hazards and du Pont brands are not in sympathy with this cutting of retail prices, but it would be an object lesson to coal operators who leave their legitimate business to engage in other business; that where heretofore coal operators have made from $500 to $1,000 profit clear on a car of powder in which they did not have to invest a cent until they had sold half or more of it to their

3776

3777

miners in lieu of cash, they were not satisfied to let well enough alone, but were interfering with the powder business and producing chaos in prices. This works a general injury to all other coal operators by reducing their profits on powder. That would in my estimation work in our favor.

Another suggestion. You recognize that this new mill is to be built and you do not approve of the suggestions that I have made
3779 in regard to the retailing of powder to miners, then I would suggest that it would be well to go to Mr. Talley and associates and say to them: 'We have concluded to build a rival mill at Terre Haute in defense of our trade and powder interest. You are leaving your legitimate line of business to engage in ours and it is but natural that you awaken a certain opposition. We submit that it might possibly save you some money to join with us and if you desire to test the powder
3780 business, put your $50,000 in with say $75,000 that we will furnish and instal a plant at Terre Haute. We could not afford to take a minority interest in any enterprise, because we must govern this plant in harmony with our business throughout the country or general destruction will ensue. We think that we can make more money for you with your $50,000 invested in harmony with the Powder interest, then you could make, certainly with the opposition that we expect, and frankly state will use in defending our trade.' I believe they would join and if you held the controlling interest possibly it would be the cheapest way out of this difficulty, provided you could keep the word from the other fields where similar organizations could

be effected. I will suggest this to Mr. Colvin, and although it may not be new to you in any sense, it may appear a favorable solution of a very, grave problem. Yours very truly,

R. S. WADDELL, Agent.

Q. So you suggested also this interview with Mr. Talley in which it was endeavored to buy 51 per cent of this stock? A. No, when Mr. Colvin arrived in Cincinnati they had already thought of that proposition, it was never made. 3782

Q. They never did that, build a rival mill to sell powder down there at Terre Haute according to this first suggestion, did they? A. Well, wo looked up the sites, three of them there.

Q. You did not build any mill down there, did you? A. No, we finally gave it up.

Q. Do you recall also that you suggested that all of the Powder Associates appoint someone an agent out there for the purpose of economy to sell all the powder? A. Yes, I recollect a suggestion of that kind. 3783

Mr. Button: This is your letter, Exhibit A-152 of May 17, 1897. (Reading):

May 17, 1897.

Messrs. E. I. du Pont de Nemours & Company, Wilmington, Del.

Dear Sirs: The proposition that confronts the manufacturers of powder is one of serious import.

If the management of Indiana Powder Company, is discreet and controlled by good

business judgment the future success of the company is as fully assured and its prosperity as secure as that of any other company in the country. If it is a success for ten mines, it would be equally advantageous for as many more and I see no good cause why this could not be extended or a like organization formed for other operators.

If it be admitted that this company is well founded, is not the way open for other or-
3785 ganizations and will probable success for the four additional plants, now building or under contemplation at Birmingham, Pocahontas, Springfield and in Southwest Missouri?

Is it not imperative that owners of powder machinery that may be rendered useless by consumers buying their own mills, should take prompt and vigorous measures to meet this destructive competition?

I wrote you some time ago that it was time to sacrifice prejudices for prosperity. We
3786 are clinging to antiquated business customs that do not conform to present requirements. It is possible that these are too deep rooted that some great crisis will alone eradicate them. The powder business is loaded down with expensive methods that the public will not patiently bear.

Suppose Coal Operators in all parts of the country conclude to make their own powder and invest in machinery for that purpose. It will then be too late to meet the issue. If we sell below their cost or profit point they will buy from us; if above it they will make their own powder. The time to arrest such disaster is now when it only threatens.

The security and prosperity of the business in the past has rested on the ignorance

about the business among men are ready to invest. Manufacturers are at the mercy of the "Promoter" or "Organizer." No business offers the temptations, no field holds such inducements and promises of rich reward as the powder business. I could name twenty men of sufficient acquaintance, ability and information to organize a line of companies in all the coal fields. Why not fortify against a danger that menaces the business with total destruction. Electric Engineers are competent to furnish plans for installation of complete plants. 3788

The waste and burdens of the powder business would enrich hundreds of men. It is the only business within my observation that is operated chiefly for the benefit of railroads and to perpetuate expensive evils that grew up in prosperous times. We are ten years behind the demands of the business world and our methods are obsolete among progressive manufacturers in other lines who make and market their products by improved methods. It is a marvel how we have escaped the attack so long. 3789

The discontinuance of Agencies was more of a form than a fact. Several companies sustain them to-day as prior to 1891. It was a step in the right direction, but not radical enough to accomplish much good. The suggestion for two or three shipping days per week from cities is a trivial saving—merely throwing out a little ballast. Perfect security lies alone in two very radical changes:

First: In cheapening production by cutting down the general expenses attending the making of powder and not directly associated with the handling of the product.

3790 *R. S. Waddell—Cross*

Second: In reducing the cost of marketing the product to the minimum by eliminating if possible all the waste from this department. Three, or at most five, Sales Agencies would be sufficient to market all the powder and all trade and orders for all brands should be referred to such Agencies. The Mills and main offices should make powder and direct the business, but no sales should be made by them. Territorial lines would
3791 prevent competition between Sales Agencies. Instead of more than fifty travelling salesmen at average salaries of $2,000 each and as much more for travelling expenses and for "sugaring" the trade, five salesmen or more properly Adjusters (collectors) could do better work. Instead of a coal operator buying from one company until his credit is exhausted, then getting powder from other mills until he catches all in his general assignment, credit could be judged by one
3792 competent man, and if the operator did not pay in proper time he could pay cash or quit mining. The savings that could be made would enable you to supply powder at $1.00 per keg and net you a better profit than you get from $1.25 at present. It would reduce mill cost and the margin between mill cost and selling price so much that capital would shun the business. Profit and Lost Accounts could be shared as per quota of each brand sold and accounts be kept in the name of the Sales Agency, similar to the Ohio River Salt Co., which was the first Marketing Agency in this country in 1868, and rendered good service. My father-in-law was the bookkeeper and Treasurer of that Agency, and I was associated in direct-

ing it. The army of employees now in service could be reduced to a Squad. Freight, storage, cartage and other expenses could be wonderfully decreased.

Agencies (commission) could be controlled, the commissions equalized and reduced; stocks concentrated and delivery charges be lowered. Shipping or sales days could be fixed for cities in accord with the demand at different seasons of the years and 3794
without consulting railroads.

There would be no need of salesmen because contracts could be made with operators for the year at a price for Summer and Winter or subject to market fluctuations of nitrates. A commission composed of the principals could govern the sales and apportion the brands and direct as to shipping points, the quantity to be sold of each brand; then let the Agency study to disbribute this at the least freight cost. The sales could be reported weekly or monthly to the 3795
Commission.

Sugar is sold alone from New York. Oil from four or five branches, and this article is used by thousands of people, while few use powder. Other articles apparently irreconcilable are concentrated in sales departments. Economy in distribution as well as production is the necessity of the times and I believe you will ultimately come to this plan or be shut out by Combinations of Coal Operators.

It would release some worthy men and mean the survival of the fittest. No doubt every company would present its preferences and its prejudices and these would have to be sifted. Competency for the future

3796 *R. S. Waddell—Cross*

service would be the criterion. With the facilities which you possess for large, varied and cheap manufacture the ability to purchase on a large scale, and to get quicker returns with less losses than in the past, and with a diversified trade in Sporting as well as Blasting Powder, you could defy competition. You could make a good margin between the car and small lot price, for the little buyers will not be mill builders.

3797 It all would not enter the Agency, would they sell their quota to the other manufacturers at a mill price and let the Agencies sell the goods?

This is the business philosophy of the times and I predict you will be forced into it for self preservation of trade before two years have passed. The move should be made now and the details worked out at once. The forces trained to reduce expenses to the minimum per keg. Buy insurance you could bond the agencies and be secure.

3798 It would be a severe blow if you should decide on such a plan and having in view the saving of expense, reduce the car price of 800 kegs to $1.00, the 400 keg lot to $1.10, and small lots to $1.30 in Ohio, Indiana, Illinois, and proportionately in other threathened districts. The public requires and expects of manufacturers every saving they can make in office rents, salesmen, bookkeepers, agents, clerks, telegrams, freights, commissions, expenses of travelling and other burdens that the powder business now bears.

If smokeless powder complicates this question, omit it and sell that article sep-

arately until such time as a plan can be formed.

I can see the dozens of criticisms of the scheme. The loss of individuality, the appointing another to sell a company's goods, yet this is done now, and the objection to Trusts and combinations. If manufacturers can agree on a quota for each, they ought to be able to agree on a plan for cheapening the sale of all the quotas.

The main question is this: Do they read 3800
the signs of the times and recognize the emergency that is ahead of them when some good organizer will shut them out?

I do not wish to appear in the role of an alarmist, but I realize the necessity for concentrated action. People have been taught that powder costs 70 to 80 cents and it must be sold low or others will make it. Would it not be wise to cut off the excesses in the business. This cannot be done by the companies individually; it must be done 3801
collectively. Mill buying will only result disastrously. Prevention of mill building by rendering them undesirable investments is the safest and surest course to pursue. It does not alarm the Standard or Havemeyer to suggest that man will build an oil or sugar refinery. Their stocks are for sale at a price.

Please pardon this long letter for I have probably "thrashed old straw," but there seems to be urgent need of action along the lines I have discussed. Yours truly,

R. S. WADDELL."

Q. Now then, that recommendation was to form

an agency in the Middle West by someone, and have all these Powder Associates authorize that agent to sell all of the powder, was it not, Mr. Waddell? A. The plan was this: They had agreed upon a quota for each company; I understood and knew the quotas. Instead of paying out enormous costs to maintain six or seven or eight agencies in one city like Cincinnati, I recommended that the agencies be concentrated for sales. Their quotas were
3803 determined; let that agency sell it and give to the public, to the consumer, what that extra cost was. I thought that was economy at the time.

Q. That agent would be the agent of each of these companies, would he not? A. Not necessarily, they might go outside or find any other kind.

Q. I know, but that is exactly in line with your suggestion here, to appoint one man to market the product of these different companies, wasn't it, all through one selling agency out there? A. Not through one, no.

Q. Through but one selling agency and the ob-
3804 ject of that was that there would not be any competition between the various companies, that is the idea, or wasn't it? A. There would be no competition, I knew that, there was no competition.

Q. This scheme was, was it not, to work the business a little more economically, was not that the idea? A. It was to make an economy and give it to the public and that was the scheme.

Q. Was it a combination between all these companies of that character? A. If they could be combined; and instead of keeping high prices between them, to cut the prices down and give the benefit of it to the public.

And in 1897 you recognized that it was the philosophy of the business times to avoid this cutthroat competition which you had seen from 1890

to 1896, did you not? A. No, I did not have that in mind. We had discontinued—when I went to Cincinnati I had 165 agencies and I cut them down to about 10; all the powder companies in the United States discontinued these agencies.

Q. You well recognized in 1897, not only that this arrangement such as you have been complaining of here was a usual one, and one that the public was demanding for the age, was not that true? A. The public demands commodities at the very lowest price for which they can be marketed, yes. 3806

Q. You recognized at that period that the public requires and expects of manufacturers every saving to be gained in office rent, salesmen, bookkeepers, agents, clerks, telegrams, freight and so forth, and that thereby a company might put itself in a position to compete—so that no other company could compete against them simply by organization, didn't you Mr. Waddell? A. No, that was not the thought. The thought was this, that Hazard should not ship powder from Hazardville, Conn. to Nebraska or Colorado. The mill that 3807 should sell the powder in that locality should be a mill located nearby and not pay the railroads, not work for the railroads exclusively. I thought that there was economy along that line and I think so still.

Q. And also all of this clerk hire of the several organizations should be eliminated, that was your idea in 1897? A. Some of them, not all of them.

Q. Consequently when we come down to the period of 1903, you thought that it was a proper matter, would you not, for the du Pont Company to try to have concentrated its business of the companies it owned at that date for the purpose of eliminating separate clerk hire and sales departments and expenses of that kind and that the pub-

3808 *R. S. Waddell—Cross*

lic were demanding it, wouldn't you? A. They did not do it.

Q. Didn't they combine in one company all of their selling agencies and in one concern all of their manufacturing plants and concentrate each of their departments in 1903 in the E. I. du Pont de Nemours Powder Company as you understand it? A. Yes, they did that, they concentrated it.

Q. So far as that particular thing goes then, that is a matter which you considered in 1897 the pub-
3809 lic had demanded, didn't you? A. No, no, my proposition was very different from this.

Q. In reference to this long letter it appears from that that there were four new companies contemplated in other coal fields that you mentioned therein, one over in Birmingham, and one in the Kanawha District and one somewhere else? A. Birmingham,—I don't recollect that long letter, I think I spoke of Birmingham. That mill was built the others were just rumors of mills.

Q. They were talked about at that time, were
3810 they not? A. Rumors had come to us that they were contemplating building them.

Q. In our letter do you recollect that you stated that the electrical engineers were perfectly competent to furnish machinery for powder mills complete? A. Electric machinery, yes.

Q. Didn't that refer to the complete machinery for the powder plant? A. No, not for powder grinding machinery, wheel mills and things of that kind.

Q. Mr. Waddell, did you write this letter, April 29th, and this letter of May 22d, 1897? A. That is my signature.

Q. That is the newspaper clipping that was referred to in the letter this morning? A. I don't know what the clipping was in the other letter; that is the one that I refer to in this matter.

(Letters received in evidence and marked Defendant's Exhibits A-156 and A-157.)

Mr. Button (reading): This is "Du Pont Company, April 29th, 1897.

Dear Sirs:

I enclose you clipping from the Evening News of Indianapolis, under date of April 24th. I learned of this mention and wrote for the paper expecting to get full particulars. One of the names is spelled incorrectly; they should be: J. Smith Tally, J. W. 3812
Minshall, J. R. Rash and Joseph Martin. Minshall and Martin are the chief owners of the Ozark County Coal Company of Rosedale, Indiana. J. R. Rash is the purchasing agent and representative of the St. Bernard Coal Company of Erlington, Kentucky. Mr. Atkinson, President and owner of St. Bernard, is the one whom Mr. Rash represents.

I also enclose a clipping in regard to rates for mining coal at Terre Haute. This to 3813
indicate that the miners are organized and ready to assert their rights to cheap powder at retail, if a low retail price should be established in that vicinity.

I would recommend the moving of some of the idle machinery to Terre Haute and the supplying of powder by wagon to all the parties in that field, at a pretty low retail price. It will make a great difference to the operators who have been accustomed to making from $800 to $1,000 profit on a car of powder to their miners. That, in my estimation, is the best method for meeting competition of this kind.

Enclosure. Truly yours,

"H" R. S. Waddell, Agt."

Now, there are two newspaper clippings attached which I don't think are worth while to read.

Mr. Abbott: Let me see it, please.

Q. It was two years later than that practically before the du Pont and the Hazard actually did undertake to sell powder to the miners and these operators, wasn't it, Mr. Waddell? A. I don't know when they commenced; I know it was some
3815 time later.

Q. In 1899, wasn't it? A. No, I don't think it was so late as that.

Q. Well, wasn't it after the Indiana Powder Company had begun to extend and cut the price considerably in that district? A. No, I don't believe so; I think that the retailing of powder, the placing of some of the powder in the Terre Haute field is what drove the Indiana out of the foreign field.

Q. Do you know when the du Pont or Hazard
3816 Powder Company first sold powder to the miners during this operation? A. At that particular point?

Q. I mean during the Rood enterprise? A. No, I don't remember the date; it was when the Great Northern Manufacturing and Supply Company was organized.

Q. And that was organized in 1889, as you testified yesterday, was it not? A. I didn't fix the date; if I did I don't know it; I know they were organized at a later date.

Mr. Button (reading):

"Cincinnati, May 22/97.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

I have a letter from Mr. Rood dated the 20th inst., written from Fontanet. We shipped a car of powder to the Parke County Coal Company and it appears that Mr. Rood 3818
filed order for shipment before Mr. Martin wanted the powder. He has 600 kegs on hand. Mr. Rood agreed with me last week that he would fix the matter up with Mr. Martin and get him to take it; failing in this, he would dispose of it for us in the vicinity of Terre Haute. At the close of his letter he says: 'Mr. Tally, I think, thinks favorably of the project you were speaking to me about—regarding our business here. I am getting along reasonably well, but am so very tired that I can hardly speak. I 3819
will write you in a day or so again.' This refers to the suggestion that I made that the new company make a proposition to amalgamate with Hazard in the new mill. I will try to get this formulated into a definite proposition, but of course must proceed cautiously or it would defeat our plan. We are dealing with fairly bright men who are enthusiastic in the new enterprise.

I will try to see Mr. Tally next week and impress him with the fact that the powder companies are facing the necessity of very decided opposition to their enterprise. I think that I can show him that you are logically driven into a defense against their

3820 movement, and that it will doubtless result in a mutual loss, by creating a ridiculously low retail price for powder that will be ruinous to the powder trade of coal operators for many years to come. I can show him very quickly that it would be disastrous to our business for the Indiana Powder Company to become a pronounced success. After this I will take up the suggestion made to Mr. Rood for the reason that I did not wish
3821 to see him lose all his hard earnings, and by this means I may bring about a proposition which I can either wire or submit to you by letter.

Yours truly,

R. S. Waddell, Agt."

Q. Well, now you did consider in May, 1897, that the older companies were driven into a defense against this kind of competition, didn't you, Mr. Waddell? A. I knew that they would defend and I was trying to harmonize the interests and save
3822 loss to both parties; I owed that duty to the company, and my friendship for the other people as well.

Q. And you knew that they had no particular choice in the matter; that it was necessary for them to get up some plan to meet this peculiar kind of competition, did you not? A. I knew when consumers decided to make their own powder that that removed their consumption from the market, which was a very dangerous kind of competition for the people that I was serving.

Q. Now you finally had this interview with Mr. Rood and his stockholders about buying 51 per cent of the stocks of the Indiana Powder Company, didn't you?

(Question repeated.) A. After I got authority

from the Powder Companies Mr. Colvin came to Cincinnati; he and I went over to Terre Haute and he instructed me what to say and I said it.

Q. Well, this is your report of that interview on June 4, 1897, is it not (handing paper to witness)? A. That is my letter, whatever the contents show.

(Letter received in evidence and marked Defendant's Exhibit A-158.)

Mr. Button (reading):

3824

"Cincinnati, July 4/97.

E. I. due Pont de Nemours & Company,
Wilmington, Del.

Dear Sirs:

REPORTING ON THE INDIANA POWDER COMPANY INTERVIEW. Mr. Colvin reached Cincinnati last Monday. We left at noon for Terre Haute; arriving that evening, I telephoned Mr. Rood at Fontantet (eleven miles 3825
out on the Big Four road) that I would like to see him about a car of powder that had been shipped and refused by purchaser; I asked him to come in to the city, and he invited Mr. Colvin and me to Fontanet, as he could not leave the work. He met us at the depot and we went over to the new mill site, description of which I will furnish you later. Mr. Rood said he would like to have us meet Mr. Tally, who was absent. I went to Chicago Tuesday night, returning at midnight Wednesday. Mr. Rood came in Thursday noon and said Mr. Tally would be home that evening and he would arrange an interview with Mr. Tally and Mr. Minshall.

3826 *R. S. Waddell—Cross*

Mr. Rood dined with Mr. Colvin and at 7.30 took us to Mr. Tally's office. There were present, Mr. Minshall, Mr. Tally, Mr. Rood, Mr. Colvin and this writer. I told Mr. Colvin that we were to interview very able business men, particularly Mr. Minshall, and that I thought it would leave the Hazard Powder Company in a better condition if he made no proposition, but left that wholly in my care. This was agreed upon.

3827 I opened the interview by stating that Mr. Rood and I were personal friends; that the relations between our office and the stockholders of the Indiana Powder Company had been close and pleasant and I deeply regretted the serious condition that this new venture placed on the powder trade, and the grave apprehension among powder men that this mill was to be built. I explained that we could see that perhaps the operators had not comprehended the full significance of

3828 their action; their chief thought had perhaps been that the coal business was not profitable and representations had no doubt been made that the powder business yielded good results. I explained that there was nothing so deceptive in trade circles as the ordinary powder prospectus, which gave the price of soda and other articles, the amount of labor—aggregating the total cost. This, I explain, was only a part of it as the balance sheet would show when the general losses and expenses were summed up. I said that powder manufacturers who held large investments regarded the subject more seriously. They apprehend that if the Indiana Powder Company is a success, other similar

ventures will be made and the powder business ruined. I explained the large investments already made in idle machinery. Mr. Minshall interrupted by saying that this was not a commercial enterprise. Both Mr. Colvin and I responded to this, expressing the thought that it was all the more serious, that if it were commercial enterprise the laws of supply and demand and of ordinary competition in trade would determine the question. 3830

I then stated that the cause of my close relations with the people and desire to avoid friction in business and not to be associated with a losing trade, and as I believed, for the good interests both of the Indiana Powder Company and the Hazard Powder Company that I had a suggestion to make which might not meet the approval either of the Hazard Powder Company or the new company; but to me it seemed equitable and feasible. I said Mr. Colvin (as Mr. Rood had no doubt informed them) contemplated the building of a mill at Terre Haute several months ago. We had been looking over the field, considering what was best and the idea occurred to me and had been suggested to Mr. Rood, that if the stock in the new mill is $50,000 that they amalgamate with the Hazard Company, who should put in an additional capital, sufficient to give them the controlling interest, which might be large or small, as could be agreed upon. I would suggest $50,000 and $51,000. I explained the relations of the Hazard Powder Company with other companies and their endeavors by a mutual understanding, to 3831

maintain prices; that by such a combination the Indiana Powder Company could obtain the benefit of these relations and be in a condition to profit thereby. I said that so far as the Hazard Company were concerned, I would recommend to them through Mr. Colvin, that the present stockholders of the new company be permitted to build the mill in their own way, operate it as they thought best, and to take about fifty per cent. of the
3833 product of the mill, to be consumed by those stockholders, and that the Hazard Powder Company be required to take the fifty-one per cent., if necessary, to find a market for it. If such a plan were favored I would guarantee that we could place the extra output, provided of course the powder were of a merchantable quality, and such a company would make no other. Mr. Minshall replied that he would speak for the new company, and did so advisedly—that under
3834 no conditions would they consent to sell any of their stock to an outside company and that they would not under any condition enter into an arrangement with, or sell the controlling interest to a foreign corporation. He said they were a unit on this question. I asked him if he had any suggestion to make, and he said the only one would be that their mill was an assured fact; their contracts had been made; that they would be very glad to see prices maintained and to this end would be pleased to hear the views of other manufacturers and co-operate with them in the maintenance of prices; that they would use their influence for the suppression of similar projects in mill build-

ing by other people in other coal fields. Beyond this they could have no negotiations further than that in the course of two or three years, if it was found advantageous, they would no doubt be willing to join Hazard or some other company in combining their interests and making this a Great Western Powder plant. I then went over the ground carefully and specifically pointing out the advantageous and serious as- 3836
pects of the case; and there was some digression wherein we all discussed the building of parallel roads, multiplying of manufacturing interests, all tending to increase machinery beyond the requirements of legitimate trade; that it was a waste of capital and somebody would lose. Mr. Minshall responded by saying he wished to repeat clearly and with emphasis that they would not entertain a suggestion such as I had made.

Up to this point I had been affable and 3837
pleasant, avoiding friction. Mr. Minshall then said he did not see why the powder people regarded them as disturbers. I told him it was a menace to their business and capital; that the day powder manufacturers conceded the Indiana Powder Company as a success it would mean to them the multiplication of similar plants and a very early date when their own machinery would lie idle and rust and their invested capital vanish; that to my mind it meant not an aggressive fight, but self defense for the manufacturers, they could not do less than resist this assault on their business. Mr. Minshall thought they had a right to organize for the manufacture of powder for their own use,

because other coal men developed plants in competition with them and rendered their business unprofitable. This point was discussed and I explained that they were not the consumers, that they were the middlemen between the powder manufacturer and the miner; that having established plants for the manufacture of powder commensurate with the demands of the miner, we had a right to contend for a share of his trade,
3839 and I would predict that this would be done. Mr. Tally said he did not think we could afford to sell the miners as the pay was questionable. I said possibly we can do no more than sell them a part of their powder, and that perhaps would be best, but we could fix the price at which they could sell him, and that might not be so gratifying to their stockholders. Mr. Colvin explained that the powder companies had discontinued a large number of agencies so that they might not interfere with the retail trade, and by this
3840 means had benefited the operator. We spoke of the particular hardship such a reduction in price, both of carloads and small lots would be on Mr. Rood whose margin depended on the difference between mill cost and the carload price, while the coal operator might be able to get a little additional from the miners. I pressed the issue on this point with all the severity the parties would stand. They know clearly the whole situation. The interview ended by a repetition of their position and the statement made by Mr. Minshall, that they did not intend to seek, at present, a general market, nor would they now contemplate an increase

of stock, or the sale of stock to outsiders. He would not say what action would be taken in this regard in the future." Mr. Tally qualified this by saying that he thought it but fair to mention that if the Indiana Company had by reason of a strike at the mines of any of its stockholders, or for other cause, an accumulation of stock, that they would not limit themselves by saying they did not intend to sell all extra 3842
product; that they certainly would go on the market and place it. There were a number of pleasantries exchanged by all of us. We were invited to visit them and confer at any time and they promised to call on us in a friendly spirit. The interview was not satisfactory, but it was very clear and left each party with a thorough understanding of the position of the other.

This is intended to be a written confirmation of what I presume Mr. Colvin will give to you. I write it for record and future 3843
reference, thinking you might have occasion to refer to it in the future.

Yours very truly,

R. S. Waddell, Agt."

Q. Now that reflected pretty well the feeling that you and your principals had at that date, doesn't it, Mr. Waddell? A. That is a correct statement of the interview.

Q. And it was certain that unless something could be done you would drift into another period such as you had had from 1890 to 1906, wasn't it? A. No, it was a different proposition from that.

Q. Well, a worse one, wasn't it? A. Well, we were losing the trade of these men who were engaging in the powder business, the coal operators.

Q. And as you state in this letter there was plenty of machinery that the old companies had to supply all of that trade at that time, wasn't there; they had sufficient capacity, didn't they? A. No, we were just seeking the building of another mill a few months before that right at this place; that was probably an argument that I used
3845 at the time.

Q. Probably it wasn't true? A. I was using all the argument I had in favor of the companies I represented.

Q. Do you recognize here also the fact that it is pretty easy to fix the price of powder by selling a very little of it through a district at a cut price, don't you, Mr. Waddell; hasn't that always been true in your experience? A. No, not always.

Q. Well, don't you think that by putting out a very small amount of powder through a district at
3846 a cut price that that regulates the price on the whole output? A. It depends all together upon the people who have the large amounts. As you state there, the Indiana sold, I don't know what time it was, two years perhaps as you have it, and they didn't disturb the price very much.

Q. But you say, "I said possibly we can do no more than sell them a part of their powder and that perhaps would be best, if we could fix the price at which they could sell in"—— A. We could fix the price, sure.

Q. That is if you sold at a lower price to a few of the miners you knew well enough that that would fix the general price through that district, didn't you, that would make discontent between the miners? A. That these operators employed and their employers.

Q. And that was one of the things that you relied upon when you built the Buckeye Powder Company, was it not, to induce the du Ponts to make some arrangement with you? A. No.

Q. Did you write this letter? A. No, I didn't write that; it has got a rubber stamp on there with my name, but I don't know if I wrote it.

Q. Well, didn't you know that these letters were being circulated to the trade in 1907? A. I don't know what I knew at that time.

Q. Well, don't you know now that these—that 3848
this is a circular of the Buckeye Powder Company, gotten up and circulated quite largely through the middle west? A. I don't think that this was my language.

Q. Who got it up? A. I suppose some one in my office, Rob, possibly.

Q. Have you any doubt about it—isn't that another copy of it (handing paper to witness) sent to another company? A. I didn't notice who that was to (indicating).

Q. This is to the Carterville Coal Company, St. 3849
Louis. A. It appears to be a circular of some kind.

Q. Don't you know that these circulars were sent out by the Buckeye Company, Mr. Waddell? A. I don't recollect them; we sent out a great many circulars, advertising matter—all kinds—I don't recall specifically now.

Q. Do you recollect that you had a rubber stamp like that in your Buckeye office? A. No, I don't.

Q. Who was there that had authority to put your name on a circular and send it to the trade, if anybody? A. R. S. Waddell, Jr., would have authority, but he usually put his own name on.

Q. Well, now don't you know, Mr. Waddell, that you did see this circular and knew that it was being sent out? A. I have no recollection of the circular; possibly it may have been done.

Q. Was the Norris Coal Mining Company, Illinois, a concern to whom you were selling powder in 1907? A. No, I don't think we sold them—I think we sold them ten kegs and it was returned.

Q. It was a concern to whom you were trying to sell powder? A. We made efforts to sell.

Q. And the Carterville Coal Company of St. Louis, Missouri, likewise? A. I don't know whether I ever called on Carterville or not. I guess I did.

3851 Q. Then you wouldn't acknowledge that these were sent out with the authority of the company? A. They don't bear my signature or anything that I can recognize there and I have no independent recollection of them. We sent out a great mass of stuff—advertising—that I couldn't recall.

Mr. Button: I would like to have these marked for identification.

(Papers marked for identification A-159 and A-160.)

3852 "Peoria, Ill., Jan. 25, 1907.

Carterville Coal Co.,
St. Louis, Mo.

Dear Sirs:

'The Powder Trust' is on the toboggan. It is like a ship at sea in a storm without a head, a pilot or a rudder. The 'Trust' has been spanking rubber babies, the independents, for three years, and it is about exhausted. This delectable exercise costs the 'Trust' two million dollars a year and does no harm.

Buckeye only makes a little over a quarter million kegs a year, but it regulates the

price on five million kegs. The 'Trust' used to meet at New York and fix prices. Now the Coal operators, quarrymen and small country stores fix the prices for the powder trust by buying BUCKEYE. A swarm of 'Trust' salesmen follows.

If you want to see a salesman of the 'Powder Trust' 'throw a fit' show him a keg of BUCKEYE; then name your price. One of our friends just secured a cut of fifteen cents. 3854

It pays to keep a stock of Buckeye in your magazine for a squeezer. Try it. The 'Powder Trust' has no price. Its instructions to salesmen are: Accept any price the buyer tells you is necessary to beat BUCKEYE. The harvest is ripe, you are getting your share of 'Powder Trust' boodle. If not, consult us, don't contract.

Keep the play open. It is a continuous performance and yields fat returns to regular actors. 3855

Truly yours,

BUCKEYE POWDER COMPANY.
Robert S. Waddell,
President."

Q. Now it was pretty true, wasn't it, Mr. Waddell, that the powder you made during that time regulated the price on four or five million kegs of powder? A. They cut the price on four or five million to drive me out of business.

Q. That is, your small amount of powder regulated the price because you had cut the price, didn't it, Mr. Waddell? A. No, that wasn't it; you have got it all wrong.

3856 *R. S. Waddell—Cross*

Q. Isn't that the same thing that you said in this letter of Mr. ——— that I have just read here when you said that selling a little powder to the miners at a small price would regulate the price on the rest of it—the same situation, wasn't it? A. Oh, no, no. That was a deal between the operator and the miner; this was a deal to the general trade.

Q. I understand that well, but you think the principle would not be the same? A. No, oh, no.

3857 Q. So by this statement you think that the man whose price is the highest is the one who regulates the trade, do you? A. The man who puts detectives on the track and chases you down is the man who regulates the price in Illinois.

Mr. Button: I move that the answer be stricken out.

The Court: Yes, that may go out. Read the question.

(Question repeated.)

3858 A. It is the man that agrees with all of his associates to make a price and when my price was $1.18 per keg in Illinois, make a flat price of ninety-five cents. He is the man that regulates the price.

Q. Well, after you have repeated your whole declaration in this case, Mr. Waddell, I wish you would answer the question, which is whether or not it is not the man that makes the low price that regulates the price throughout the district? A. Yes, the Powder Trust cut the price to ninety-five cents, the Powder Trust did it.

Q. Then it is true that the Buckeye Company's powder was regulating the price on a quarter of a million kegs in 1897—it was because it was the lowest price, wasn't it? A. No; I was doing it be-

cause the Powder Trust was after me; they were fixing the price.

Q. When was this $1.18 price you were talking about that the Buckeye made? A. I think my average price during 1904 was about $1.17 or $1.18 a good part of 1904—certainly in the early part of it.

Q. Did you sell Gaunt Brothers in 1904 at $1.02—$1.02½? A. I don't recollect.

Q. Did you sell the Big Muddy Creek Company at $1.08 in 1904? A. Big Muddy. 3860

Q. Big Creek Coal Company or Central Coal & Coke Company, its predecessor? A. I don't recollect, I don't believe I sold them any in 1904; my sales were here.

Q. Can you say that you didn't do it? A. No, I won't say that I didn't do it or that I did do it; I don't recollect.

Q. What was the first sale that you ever made? A. From the Buckeye Mills? I think the first carload I ever shipped was to Brechnitz Brothers.

Q. Yes, and what was the price? A. I don't know whether it was $1.15 or $1.20. 3861

Q. It was $1.05, wasn't it? A. No, it wasn't.

Q. Wasn't it this voucher that you have heard these people examined about here and carried way through your books, which showed that it was $1.10 less some rebates? A. No.

Q. It wasn't? A. I sold Brechnitz at the start at $1.15 or $1.20.

Q. The first sale you made to Brechnitz was $1.10 and you know it, don't you, Mr. Waddell? A. No, I don't; look at the contract; I had a contract with him.

Q. That was later in May, 1904; you sold him in November, 1903, your first powder, didn't you? A. The first carload of powder went out, I think, to Brechnitz.

Q. And it was at $1.10 with some discount, wasn't it? A. No, I think not.

Q. And do you not know that he was buying from the Austin Powder Company for $1.35, didn't you? A. No, I didn't.

Q. Do you know whether he was or not? A. I don't know anything about his deal with the Austin; the books there will show what I sold Brechnitz, but it was at that price.

3863 Q. Well, I was trying to find out where your $1.18 price is? A. Oh, I sold powder as high as $1.30—$1.40.

Q. Whereabouts? A. I don't recall.

Q. Montana or Wyoming? A. No.

Q. Where did you sell any powder for $1.35 or $1.40? A. I would be glad to show you on the books; I cannot remember transactions years ago on hundreds of accounts.

Q. Possibly between now and the next adjournment possibly you can call our attention to some such sales? A. That I made at $1.35 and $1.40?

3864 Q. Yes. A. I would be glad to do it.

Q. Were those carload lots? A. I don't remember; I think I sold carload lots as high as $1.65.

Q. Well, it was at some remote place where your freight was very high, wasn't it? A. Yes, I sold some, I think I made a sale in Montana at $1.65 and the freight rate was eleven cents a keg on it.

Q. Well, you were selling to Brechnitz at $1.05 in 1904, weren't you? A. 1904—I don't recollect what our price was to Brechnitz, my contract with Brechnitz was, I think, $1.15, and we sold it to him at that. There were many cases I think, a dozen of them, where we would sell a carload and then they would send us in du Pont quotations and then we would rebate down to the quotations.

Mr. Button: I move to have that stricken out, your Honor.

Mr. Abbott: I don't think that that should be stricken out, your Honor.

(Question repeated.)

The Court: And this you say is the answer?

Mr. Button: As I caught it he was talking about their trade other than Brechnitz; if he was referring to Brechnitz, well and good. 3866

The Court: If that pertains to Brechnitz it may stand.

Mr. Button: I don't object to that; it is the rest of it.

The Court: You may ascertain whether he means Brechnitz or any one else.

Q. You stated that you didn't recollect about Brechnitz as I understand it, in the first part of your answer, Mr. Waddell? A. I recollect we made some rebates to Brechnitz possibly on more than one occasion. 3867

Q. Well, now do you recollect whether you sold Brechnitz in 1904 at $1.05 or not? A. No, I don't recollect.

Q. And that Brechnitz contract I suppose you recollect covered a large number of coal operators around Belleville, did it not? A. It didn't cover them; it covered Brechnitz and he covered all their supplies, I guess.

Q. That is, you were selling the Brechnitz Brothers all the powder, all of the requirements of those large number of coal operators, weren't you? A. I was selling him to supply his trade.

Q. And that was enough to supply all of those operators mentioned in that contract, wasn't it?

A. I didn't contract with anybody but Brechnitz; I didn't see the others or have anything to do with them.

Q. But you contracted to sell him something, didn't you? A. I contracted to supply Brechnitz whatever his requirements were and he sold the powder to the people mentioned in the contract, to a number of his customers; but whether he sold them or not, I do not know. I did not have anything to do with the customers.

3869 Q. What you sold him was this, all the black blasting powder not to exceed 25,000 kegs and all of that may be ordered by the party of the second part for delivery to himself or the following customers whose trade is hereby set apart and reserved to the party of the second part. That is what you sold him, wasn't it? A. Yes, that is the list in his contract.

Q. Consequently if it should turn out that this was a cut price to Brechnitz, it would not be to Brechnitz alone, but to these 18 or 20 coal operators? A. Oh, no, no. They were not interested in

3870 that contract.

Q. Were not they interested in Brechnitz getting powder from the Buckeye Powder Mills at 30 cents a keg less than Brechnitz, who theretofore had been a buyer from the Austin Company. A. No, Brechnitz may have charged them the same price on one powder that he did on the other.

Q. Do you know anything about that? A. I don't, no.

Q. He would be in a position to charge them 30 cents less if the facts I state are true, wouldn't he, and sell them at the same profit? A. Yes, if your statements were correct, but I doubt it.

Q. Shortly after these efforts to make some arrangement with Mr. Rood you began to get evi-

dence that he intended to extend, did you not, his business? A. I don't think he had extended his business for two or three years.

Q. Very good. But you got statements from him that he was going to do it, didn't you? A. No; the only statement we ever had was the threat that Mr. Talley made there in that interview, and that was a rather heated one.

Q. What was the threat that Mr. Talley made? A. He said that they reserved the right to sell outside of that, if they desired to do so in the future 3872
and they would not bind themselves.

Q. In this letter, will you look at it and see if Mr. Rood had not called at your office and stated, "We shall not at first have any powder to sell provided our mines are all in full operation; a little later on I think we will have a surplus and I shall try to dispose of this to two or three large buyers without causing general dissatisfaction among the powder companies." Read that letter and state whether or not you had such a conversation with Mr. Rood in July, 1897 (handing paper to wit- 3873
ness). A. I may have had the conversation; I don't recollect ever having any conversation like this. If I stated it in that letter it is correct.

Q. I will have the letter marked then as an exhibit. Is that your signature? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit A-161.)

Q. You have spoken in this letter of the Keeler contract and stated that was the first, he just sent you that wire?

Q. Who was it sent you to Chicago to make this contract with Mr. Keeler which you say was the

first contract made under this contract system? A. Eugene du Pont.

Q. Now isn't it true that Mr. Keeler requested such a contract to be made with him and that he was the first one to take that matter up? A. That is barely possible; I don't know how the question may have come up; he may have suggested it to me and I reported it to the company and it may have come around that way to me, I do not know.

Q. Do you recollect receiving a letter from him
3875 in May, 1897, asking that such a contract be made? A. No, I have no recollection of it.

Q. Well, you signed this letter to the du Pont Company enclosing such a letter (handing paper to witness). A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibits A-162 and A-163.)

I would like to read the enclosure.

Mr. Abbott: What is this about?

3876 Mr. Button: This is about the Keeler contract.

Mr. Button (reading): "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: I wired you message today reading:

'Keeler, Chicago, writes: "Am offered Indiana Powder stock. Arrangement appears liberal to coal men. Cannot you make me proposition on supplies? Do not desire to engage in business offered. Know nothing about it. Expect my consumption will double within two years. Answer."

Hazard.'

And now confirmed. Herewith I hand you

copy of letter from Mr. Chas. F. Keeler, President of the Diamond Block Coal Company of Brazil, Ind. This is important trade and I thought you might wish to do something with Mr. Keeler, as he does not appear anxious to engage in the powder business. Knowing of your proposed meeting in New York today, I thought you might like this information and so wired it. If advices are received from you instructing me to confer with Mr. Keeler, I will either go to Chi- 3878
cago or write him as you may deem best.

Yours very truly,

R. S. Waddell, Agt."

Mr. Keeler's letter is: "I am offered some stock in Indiana Powder Company, the stockholders of which will be all consumers of powder and practically take care of their own output. According to the statement of the gentlemen who are arranging the mat- 3879
ter, the margin on powder appears to be very liberal, especially to a coal man. Can't you make me some kind of a proposition on what powder I use that would keep me from doing a foolish thing by going into a line of business that I know nothing about?

Yours truly,

Charles F. Keeler.

I expect my consumption will be double inside the next two years."

Q. Now that was the origin of the Keeler con-

tract, wasn't it, Mr. Waddell? A. I should judge so from that letter.

Q. That is, he came to you and wanted you to get up a contract or some arrangement with him to furnish him powder so he would not have to go in with these other people? Don't you recollect that to be the situation? A. I have no recollection beyond the letters themselves.

Q. From this situation it further appears that the man who originated this contract—this con-
3881 tract system that you have mentioned, was Mr. Rood, together with his stockholders? Is not that true? A. No. No. Rood's contract with his individual stockholders was wholly different from this contract system that we are mentioning here.

Q. You and the du Pont and Hazard Company found Mr. Rood going around to this, that and the other coal operator making an exclusive contract for the purchase of all the powder for these respective mines, did you not? A. No, no, that was not the practice.

3882 Q. What was it? A. These gentlemen took stock in a manufacturing enterprise and of the amount of stock they took was based upon the amount of powder they consumed in their mines. This is wholly different from the contract system of tieing up the trade.

Q. I am talking about who originated it. The taking of these contracts that made the Hazard and the du Pont and the other companies follow around and begin to make contracts in that district with other coal men for one and two or three years, that made them do that, didn't it? A. No, they had done so at that time.

Q. And it was not Mr. Rood making these contracts with these different coal operators that caused it, was it? A. There was no similarity between the deals.

Q. Wasn't it after they had made these contracts, whatever they were? A. It was after he organized his company.

Q. And made these contracts with his stockholders, it was after that, wasn't it? A. Rood hadn't made the contracts with the stockholders, the Indiana Powder Company made them.

Q. Put it that way. It was after the Indiana Powder Company had made these contracts with its stockholders, wasn't it? A. Yes, six or eight 3884
months.

Q. Well, you went to Chicago and saw Mr. Keeler and had a protracted interview with him, did you not? A. Oh, no, not a protracted interview; we talked probably a half an hour in the forenoon.

Q. Here is what you said to Mr. Keeler, isn't it (handing paper to witness)? A. That is my signature.

Mr. Button: Mark it.

(Same received in evidence and marked Defendants' Exhibit A-164.)

3885

Mr. Button: This is dated May 21, 1897. (Reading):

"May 21, 1897.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: I wired you Thursday suggesting that I could go to Chicago if desired, and it was with a view to finding out from Mr. Keeler the Prospectus of the Indiana Powder Company in soliciting stock. I was partially successful although Mr. Keeler did not have the figures in detail. He had a memorandum which Mr. Rood had left with him showing the mill cost of powder at 57c.

per keg. This included the cost of plant aggregating, with the land, side track facili ties and all other expenses to build the plant, a little less than $26,000.00 He submitted quotations on nitrate of soda, charcoal and surplus delivered at their mills and an estimate made by a practical powder man on the day labor necessary to produce 400 kegs; including a salary for Mr. Rood, the amount of which he did not remember, but thought
3887 it was $3,000.00. Added to these current daily expenses and including therewith 6% interest on the investment of $26,000.00 gave the mill cost of powder 57c. per keg. To this they proposed to add 10c. per keg for insurance, which was to be set aside as a sinking fund. Mr. Keeler thought this an exorbitant amount; $40.00 per day, or say $12,000.00 per year. I said to him: 'You have just had an object lesson where several large companies, one of them capitalized for nearly $400,000.00, after a very severe
3888 struggle, quit business because they were not able to stand the losses they sustained in meeting an 85c. price for powder. If one company of expert powder men could lose so heavily as to retire from business at 85c., how much faith can you have in a proposition from a little mill to produce powder at 57c.?' He did not defend very strongly on this question, but said that he would be willing to concede that it would cost 80c. to make and deliver them powder, but this price would be ample to cover all contingencies. He told me that Mr. Tally and two or three other bright business men, whom he considered thoroughly competent

to pass on the question, claimed that there was no doubt of their producing powder below 70c. per keg, and if the construction of the mills was properly governed, this price would meet all their losses. I asked him if he had attended any of their meetings. He replied that he had, and I drew out the fact that they were holding meetings in February at which Mr. Rood was present. I said: 'Mr. Rood is to be one-fourth owner in the 3890
mill. He has, up to the first day of May, been receiving cash for his traveling expenses, and a salary that covered all of his time, which was to be honorably bestowed in forwarding the best interests of his employers, and that during this time he had been using their money for travelling and hotel bills, and had given his services towards the building of a mill, pledging his ability to transfer the trade of his employers to the rival enterprise.' I said: 'As a business man you can judge of the honesty and 3891
fair dealing of such work, and I ask how much money would you like to entrust to a man who proposes to give you the benefit of such action?' He said: 'That is the one point that is weakest in this whole argument. It destroyed my faith in Rood, and led me to believe that as a business man, I owed it to you and to Messrs. du Pont to place this matter squarely before them.'

He said: 'The situation is practically this: I am in the coal business as a competitor of Tally and associates, who are engaging in this powder enterprise for the purpose of reducing the cost of their coal. From a business standpoint I cannot afford to give them

this advantage, nor do I wish to become a manufacturer.' I said I had no offers to make better than $1.25 per keg in carloads, and asked if he had anything to suggest. He told me that he would concede a cost price at the mills of 80c. per keg; that if we contracted powder to him there need be no cost for traveling expenses not salary of a salesman in looking after his business, provided he would share profits with him. He
3893 said: 'I think the manufacturer should have a large share of the profits on account of having carried the investment. Under the circumstances I think I should be entitled to 40% of the profits whatever they may be above the mill cost, say 80c.' I told him that he was entirely in error on this question, but I would hear his offer. He then gave me the proposition which I wired in substance as follows:

'Party estimates delivery cost eighty cents,
3894 leaving present margin forty-five cents. Proposes contract five years giving him forty per cent. of difference between eighty cents and car price. Would net now one dollar seven. Should eighty cents car price be reached, would then be optional with you to continue or cancel. Has five thousand stock. Indiana estimates will cost, including managers salary fifty-seven cents. Product contracted means no cost for selling. Chicago party claims investors certain of all margin above eighty and concedes sixty per cent. of his estimated profit to party furnishing capital. Wire you alone.'

Later I had your telegram reading:

'Tell Keeler his proposition will have con-

sideration. Think we can take care of him in some way. We can definitely instruct in about week or ten days.'

Keeler had gone home, but I visited his house and gave him your message, receiving his promise to wait until June 2nd. His option on the $5,000.00 stock in the Indiana Mills expires June 3rd, and he says there are a dozen men who would like to get it or more, if there was an additional stock to be issued. He told me the operators were very 3896
confident of success and from appearances he did not know why they should fail.

I asked him if Mr. Rood had made any statement to him of the amount of business he could control outside of the stockholders. He said yes, that Mr. Rood had showed him figures of a large amount of powder that he had sold and had told him that he could transfer every dollar of the trade to the new mill, if it were desired. Mr. Keeler said: 'Of course, I knew this was all pure bun- 3897
combe.' I told him Mr. Rood had an exalted idea of his own powers; that I remembered his having sent some little books containing his sales to Mr. Wheeler, President of the Hazard Company, who forwarded them to me with a complimentary letter. I footed the number of kegs that Mr. Rood reported he had sold and which were itemized in the books and it aggregated 38,000 kegs in excess of all that had been reported sold by the Cincinnati office for the year, and that included not only our direct sales, but all that had been made by sub-agents, and there were about sixty-five of these Agencies, several of whom disposed of carloads. I told

him that Mr. Rood travelled all week under our orders where to go to get orders, as outlined by the correspondence of the preceding week and by our knowledge of the trade, and that when he returned to the office on Monday he copied all of the orders we had received during the week from the order books, and made memorandum of all orders that had come to us through the mails. In this
3899 way he got not only all that we sold, but about all that the correspondence disclosed, and this included all orders that were countermanded, delayed or that were turned down by us because of poor credit of the buyer. It was his custom when anyone in our employ made a new customer (and I have personally made dozens of them), to visit the man in the course of his next trip and ask him if he had any objection to giving him his next order, and if the party assented,
3900 he considered him his customer, put his name down on the book not only for future business but for his original order. I mention this to show Mr. Rood's methods, now that he is attempting to influence men by showing his superior standing. He told Mr. Keeler that the Indiana Powder Mills would ultimately take 150,000 kegs from du Pont and 120,000 kegs from Hazard annually.

Mr. Keeler in his relations with me had been fair and honorable. I do not think he would stand strictly on the proposition he has made and believe he would accede to a counter-proposition somewhat similar to the one he has made. He was very pleasant and discussed the question solely from the standpoint of a coal operator who desires to pro-

tect himself from competition by taking advantage of a situation that has been presented to him and on which he holds an option. He expressed a preference to stay out of the powder business and is willing to do so either on a private deal or open contract, just as you may wish. I asked him how he thought the other interested parties would consider such a plan, and he said they seemed so enthusiastic and so thoroughly committed to the new mill that he did not 3902
think any arrangement would meet their approval, although there were two or three who might be open to such a deal. He spoke of Mr. Dugger, Mr. Zimmerman and Mr. Zeller, as three who would probably be ready to make a deal, and stay out of the new mill. Mr. Keeler asked me to see him or let him know the result, prior to June 2d, and he would delay that long.

I asked Mr. Keeler what the result would be if the retail price were placed below the 3903
present carload price? He said it would undoubtedly cause dissatisfaction among the miners, and he thought the price by the operators would have to be brought down to that figure. I told him it had been the policy of our Companies to stand by the operator in all labor controversies and that we would have been glad to preserve the nice profits the operator has made in the past, but that I feared action of this kind by the operators would bring upon them defensive action by the Powder Manufacturers that would equalize the keg and car price and perhaps lower both. When coal operators entered into a conspiracy with our salesmen to con-

fiscate trade of his Principals it would naturally be expected that the Principals would defend the endeavor to have the old brand of powder burned in the mines. The operators had counted themselves out as a 'buyer.' The question only remained to be settled, Could they count out the miner as a 'buyer'? and that seemed to me the only thing left for the powder manufacturer who has in-

3905 vested large sums of money in a legitimate business. Mr. Keeler said: 'Your proposition is a strong one and is entitled to respect.' I argued all the questions involved in a temperate manner and they were pleasantly accepted. I shall be subject to your direction if I can be of any further service in this matter.

Yours very truly,

R. S. Waddell, Agt."

3906 Q. Now that reflects your views at that time, doesn't it, Mr. Waddell? A. That reflects the views that were presented to the du Pont Company.

Q. Well, they were your views also, weren't they? A. Yes; I think that the operators should not have gone into a mill; that they were getting outside of their legitimate business.

Q. Now here is a letter—did you sell some powder to the Central Coal and Mining Company at Kewanee, Illinois? A. Central Coal & Mining?

Q. Of whom Mr. C. J. Pierce was the Secretary? A. I think I did; I can't recall.

Q. Is that your letter to him, is that your signature?

(Handing paper to witness.)

A. That is written by Rob. That is my name. Dictated by "R. S. W.," signed by Rob.

Q. It is dictated by you? A. Yes, sir.

(Same received in evidence and marked Defendants' Exhibit A-165.)

Mr. Button: This is on the letterhead of the Buckeye Powder Company:

Peoria, Illinois, August 26, 1903.

3908

Mr. C. I. Pierce, Secretary,
Central Coal & Mining Co.,
Kewanee, Illinois.

Dear Sir: Your esteemed favor 25th inst. received. It caused me much regret to have missed you at Kewanee.

Although our mills will not go into steady operation before September 10th, or possibly 15th, our product is being rapidly contracted, conditioned of course on our producing a good quality of powder. It will be necessary for us to make a good powder, as good as the best on the market, to establish a reputation for our brand. We have the mills, the experienced help and the material, and will guarantee this part of it. As we are favorably situated in relation to your mines, we will be pleased to do business with you. Messrs. duPont and the L. & R. Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder. We are following the list prices made by the Trust in quoting $1.35 per keg. We also have adopted their form of contract, which this writer originated, and it has been approved

3909

by coal operators throughout the country. I am sorry that an enforced trip precludes me from visiting Kewanee again.

We herewith enclose contracts in duplicate which we have signed. If they meet with your approval, kindly affix signature and return one copy to us. We based the rebate on your location being near our mills and on a favorable freight rate. With this rebate of 17½ cents per keg, it makes it net
3911 to you at $1.17½ per keg, delivered at your railroad station at Bryant, Illinois, and covers all the mines you own or may acquire in western Illinois. Please fill in the time that best suits you, one, two or three years.

Kindly regard our quotation as confidential, as it is beyond the limit. Our terms are sixty days, or two per cent for cash in ten days from date of invoice. We are in correspondence now with parties who would take a major part of our output, and it will
3912 be necessary for us to know in relation to this at your earliest convenience.

Very truly yours,
R. S. WADDELL,
Pres."

Q. What did you mean by saying your price was beyond the limit, $1.17½, Mr. Waddell? A. I don't say that. I say the terms that I gave him there, one, two or three years is beyond the limit.

Q. "Kindly regard our quotation as confidential, as it is beyond the limit." You referred to the term of the contract as a quotation? A. The whole quotation.

Q. What was it beyond the limit, the term of three years or the price? A. I don't know what I

referred to; I presume the whole proposition was beyond the limit.

Q. But you enclosed a printed form of contract that is the same as that used by the duPont Company, didn't you? A. We followed the Trust prices.

Q. Is it attached here? A. Yes, same thing.

Q. But you didn't get the business did you, at that time? A. Yes, I got the contract, but it was cancelled because I would not meet the price, the price of duPont.

3914

Q. And you found this customer to be one of those on Mr. Moxham's list which you had in your pocket which showed it was being furnished not at $1.17½ at that time, didn't you, but $1.20 at that time, do you recall that? A. I don't know anything about it. This mine that I spoke of was just opened at Bryant, Illinois.

Q. And a little bit later you sold him some powder, April, 1905, being the first powder you sold, and was at $1.08? A. 1905? What is the date?

Q. April 7, 1905. A. What was the date of the letter? It was long before that.

3915

Q. This letter is dated August 26, 1903. The order you sold on December 1, 1903, to the Central Mining Company, selling powder at $1.10. A. I don't recall.

Q. December 1, 1903. A. I know they notified me that that contract that they had made with me at $1.17½ was entirely too high; they had a better price.

Q. Did they make a contract with you at $1.17½? A. Yes.

Q. Is that among the contracts here? A. No. they never kept it, we never furnished any powder on it; they signed it; I would not meet the price.

Q. They were under a contract, weren't they, at that time with one of the Associated Companies?

A. I don't think they were, I don't think Mr. Pierce would make two contracts.

Q. Would you between now and the next session look up your books and see if you did not sell the Central Mining Company—whatever it is—Central Coal & Mining Company, some powder on December 1, 1903, at $1.10? A. I don't know whether I did or not.

Q. Won't you look it up? A. I will look it up.

3917 Q. When we adjourned, Mr. Waddell, we had just read this letter of yours to Mr. Pierce, who was the secretary of the Central Coal & Mining Company, Kewanee, Illinois. Together with the enclosure, being a printed contract which you requested that company to sign. This defendants' exhibit A-167 is the printed form of contract which you sent to Mr. Pierce, Mr. Waddell (handing paper to witness)? A. That seems to be written in lead pencil; I don't know what this is; we had blanks of that kind, I don't know whether these are the ones or not. He would not make it out in lead

3918 pencil surely.

Q. Well, is that the form of contract which you adopted and had printed at that time? A. When we started, we were following the form of the du-Pont Company.

Q. And whether that is the particular one you enclosed to Mr. Pierce, or which you referred to in this letter A-165, the contract you did enclose would be on that printed form? A. It would be in that form, but I think that was made out and returned to me in ink.

Q. Now, I show you this, and I wish you would state, Mr. Waddell, where the original is which you say was returned to you. A. I would not swear positively that it was returned. That is my impression. We never furnished any powder on the

contract, it was considered void because the price went down, and I did not follow it.

Q. You testified in that regard just before we adjourned, that you made a contract and it was cancelled because you could not meet the price of the duPont Company. What was the price of the duPont Company which you would not meet? A. Well, I don't recollect the individual prices of years ago, I could not give you the figures. The price went down and they gave me the opportunity to meet it, but I did not do so. 3920

Q. About what time was it that you cancelled that contract on account of the lower price by the duPont Company? A. I don't think—my recollection is that the contract was not formally cancelled, it just died; I did not furnish them powder under it; they did not order; they notified me that the price was lower and they did not order any powder. I understood the contract to be for such powder as they ordered from time to time would be—if they did not order any there would not be any delivered.

Q. That was what I was trying to get at. You say there was a notification to you, that the price had gotten to be lower on account of the duPont price. Can you fix the date approximately? A. Well, I went over to Kewanee personally. 3921

Q. When? A. And saw Mr. Pierce first.

Q. When was that? A. Well, that was very soon after we started.

Q. Yes? A. Or just before we started.

Q. Very good. A. It was along, I should think, in the fall of 1903 and then there is a possibility that I might have left in that memorandum with them there and that it was to be executed.

Q. This contract. A. I could not have left him that paper at that time, I don't recall definitely, but I should judge that is all there was on it.

Q. State what you do recollect, Mr. Waddell. A. Then later I called him by long distance 'phone—Mr. Pierce called me up and said he was ready to make the contract. Then I forwarded the contracts made out with that letter which you had.

Q. That is on August 26, 1903? A. If that is the date.

Q. Very good. Then you got your contracts back, and then later—— A. I did not make any powder then until about October 20th, the first I
3923 made.

Q. Until the 20th. A. No, and in the meantime—in the meantime, the contract died.

Q. Then the cancellation was really before October when you furnished any powder, was it not? A. It seems to me that I furnished a few kegs for a trial; but I am not sure of that; the books will show what it is, but that is my impression now.

Q. Your books show that you furnished 100 kegs on December, 1903, at $1.10. Do you recollect that? A. I don't recall it, the amount or the price.
3924 That is the impression that I have, that I have furnished him a trial lot of powder.

Q. Now, what I am trying to get at is: When these lower prices by the duPont Company came in. The approximate date? A. If you could tell the price of the contract, I could tell you pretty nearly when it came in.

Q. Your letter says: "Your rebate is 17½ cents, which would make your contract price $1.17½." A. Then I furnished him at $1.10, is that what the books show?

Q. Yes. A. I suppose it was in between because of something which I did.

Q. Then you did originate some contract that was used by the duPont Company, didn't you? A. No, I don't think I originated it.

Q. Then your statement in this letter to Mr. Pierce is not correct in which you say:

Q. "We also have adopted their form of contract which this writer originated, and it has been approved by coal operators throughout the country." Is that true? A. I assisted in originating it, yes; I was called in to New York to explain and to go over the contract.

Q. I know, but before that, you had actually originated it, hadn't you? A. No, I did not; there was a committee appointed that had a number of 3926
contracts, and I assisted in originating that contract, that form.

Q. And it was approved by the coal operators throughout the country, was it not? A. I think so; they would not sign it if it was not.

Q. And consequently it was an arrangement for the sale of powder which they found satisfactory, was it not, Mr. Waddell? A. Sometimes; sometimes they did not.

Q. Well, they thought it so throughout the country, did they not, as you state in this letter? A. 3927
Well, throughout the Western states, but not in the East.

Q. So by "throughout the country" you mean simply the Western states? A. Yes.

Q. Is that what you desire to state you mean? A. They went out as far as Montana, I think that they went and made contracts out there.

Q. Then this statement is not entirely true, "We also have adopted their form of contract which this writer originated and it has been approved by coal operators throughout the country." Is it or isn't it? A. Yes, it is true. You can put your own technical interpretation on it and twist it around and make it untrue.

Q. It strikes me as very plain; I have not en-

deavored to twist around at all. It seems to me that you are the one that is doing that. You say "throughout the country" means throughout the Western States, is that what you say? A. I might have given geographical boundaries, but I did not do so; I used the general term, "throughout the country."

Q. And you say "which this writer originated" means that you simply assisted in looking over some forms in New York in connection with the
3929 rest of the gentlemen, is that what you mean by that language, "which this writer originated"? A. No, I was called to New York to give my judgment in the matter.

Q. Won't you just answer the question: Is that what you mean by that phrase, "which this writer originated," your simply mean they were showing you some contracts which they had arranged, and asked your advice on. A. I had a half dozen forms and out of the half dozen forms this contract was originated.

3930 Q. Answer the question, will you please?

Q. The question is, Is that what you mean by this phrase, that you, the writer, originated it in fact, or that you had not anything to do with it and you were simply asked for your advice? A. As to what I mean by this phrase is I took part in the preparation of it, yes.

Q. Now you also adopted the rebate system, did you not, Mr. Waddell? A. Followed exactly the lines of the duPont Company.

Q. And also you adopted the proposition about your quotations being confidential, did you not? A. I think so, yes.

Q. You state here: "Kindly consider our quotation as confidential, as it is beyond the limit." Now you also state: "We are in correspondence now

with parties who would take a major part of our output and it will be necessary for us to know in relation to this at your earliest convenience." Who were the parties who were willing to take the major part of your output on August 26th, 1903, Mr. Waddell? A. We were in correspondence with four or five people. I had——

Q. Just who were they; what were their names? A. Well, the Sunday Creek Coal Company—one of the head men of the company gave me assur- 3932
ances——

Q. I didn't ask you what they said; I have asked you what their names were, Mr. Waddell? A. Well, the Saginaw Coal Company, Mr. ————, an old friend of mine, who was the general manager; the Sunday Creek Coal Company used about 100,000 kegs a year, the Saginaw Coal Company about 60,000 kegs a year. That is, the consolidation. Then with the Consolidated Coal Company of St. Louis, I had had conferences with them in regard to it.

Q. Now you state further in this letter: "Messrs. 3933
duPont and the L. & R. Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder"? A. Yes; that is correct.

Q. Is that entirely correct, Mr. Waddell? A. I think so; I had their written proposition.

Q. Very good; but that was under the circumstances in which they were to be connected with your company and were to exercise some influence over its operations and the powder it manufactured; is not that true? A. No.

Q. Oh, I thought you—— A. I owned 51% of it.

Q. You had? A. I was to own 51% of it.

Q. That is, you were to control it? A. Yes, that is right.

3934 *R. S. Waddell—Cross*

Q. I thought you had been maintaining here some time ago that that was the trouble, that they insisted on controlling it? A. That is what we split on.

Q. That was the principal thing you split on? A. No, no, that was not the principal, that was one of the items.

Q. One of them. But nevertheless they were to have representation on your Board of Directors, were they not? A. Two out of five, yes.

3935 Q. And they were to take your contracts themselves, the Laflin and Rand was to, was it not? A. I was to make a contract with the duPont Company and sell my output to the Laflin & Rand.

Q. Yes; then you think that is entirely equivalent to this statement: That the duPonts and the Laflin & Rand Powder Company offered to purchase our entire output, thus expressing their confidence in our ability to turn out a good powder? A. Yes.

Q. That is applying it to the Buckeye Powder
3936 Company, a concern which the duPonts had nothing whatever to do with at that time; you think that is perfectly true, do you, this statement? A. The du Ponts did have something to do with them; they owned them at that time?

Q. August, 1903? A. Owned Laflin & Rand.

Q. No, no—— A. Certainly, they owned—September, 1903.

Q. You misunderstand my question, Mr. Waddell; I say, at this time instead of having representation on your board as had been contemplated, instead of having at least 49% of the stock of the company, you had organized the Buckeye Company with which they weren't connected at all at this time, isn't that true? A. Yes.

Q. And you still think that that statement is ab-

solutely fair and correct, do you? A. I think so, yes; they had previously offered to purchase that.

Q. And as a matter of fact they never did offer to purchase the entire output of your mill under conditions that you would accept, did they? A. Yes, I would have accepted the conditions of the purchase, all right, but I wouldn't accept the conditions of putting my stock up in the Wilmington Trust Company, which the duPonts owned.

Q. Well, that was part of the scheme, wasn't it? 3938
A. Well, that was a separate item. I might have sold without putting up the stock.

Q. Now, I show you your invoice No. 16, in this book which I understand has been introduced in evidence—No. 1, it is marked for identification, P 67-W, and ask you if you didn't sell the Central Coal & Mining Company a hundred kegs of powder at $1.10 a keg on December 1, 1903? (Handing witness book.) A. (After examination) This is our bill—Central Coal & Mining Company, Kewanee, Illinois.

Q. And you so sold them, did you? A. I did; it 3939
was the trial lot that I referred to.

Q. At that time, you knew the duPont price was much higher, didn't you? A. No; I didn't know the duPont price.

Q. Had no knowledge about it? A. Didn't know the duPont price.

Q. Now, after the organization of the Indiana Powder Company, during the year '98 they extended their business very considerably, did they not, Mr. Waddell, the first year?

(Question repeated.)

A. Not according to my recollection. I think the first year they didn't, but I am not sure as to that.

:3940 *R. S. Waddell—Cross*

Q. Well, did you write these two letters, one in February and one in December of 1898 (handing papers to witness)? A. Those are my signatures, yes.

(Letters received in evidence and marked Exhibit A-168 and A-169.)

Mr. Button (reading): A-169:

:3941 "Cincinnati, Feb. 8/98.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Mr. F. J. Waddell and Mr. M. L. Sternberger, of Jackson, Ohio, at the Grand Hotel last evening, and Mr. Sternberger made inquiry for this writer; said he wanted me to visit Jackson and spend Sunday with him;
3742 that there was a matter of considerable importance and he would be pleased to send Railroad transportation to me. In the course of the conversation Mr. Sternberger bragged considerably about the new mill; said it came fully up to their expectations and that Mr. Rood was shipping him 3,000 kegs per month, and the powder was giving satisfaction. F. J. said to him: 'You will probably want to build another mill?' Mr. Sternberger replied: 'Yes, that is what I want to see your brother about.' He further stated that he was the one who organized the Indiana Powder Co., got the capital together and that the Mill would have been

located in Ohio, only that they found the Ohio laws compelled them to place the Mills two miles from the public highway, and they could not find such a location near Jackson.

I think it will pay me to visit Jackson and hold a conference with Mr. Sternberger, who believes I would be open to such an arrangement as he made with Mr. Rood. He either expects to build a new mill and assemble other capital for the purpose, or he wants to unload his interest in the Indiana 3944
Powder Co. Sternberger is an exceedingly bright fellow; very much puffed up, but exerts a strong influence over other local operators. After seeing him I may have something additional to say to you. For the purpose of drawing him out, I will apparently fall in with his plans to erect a new Mill and if such a scheme is under way, and you wish representation, will leave the way open for you to get it.

Yours very truly, 3945

R. S. Waddell, Agt."

Well, now, Mr. Waddell, isn't it true that about the date of this letter, February, 1898, that the business of that company was considerably extending through that country? A. No, Sternberger was brave about it; there was nothing in it—all wind work.

Q. You think they didn't extend their business then? A. Not at that time, no; I didn't go to Jackson.

Q. Don't you recollect that they did during the year 1898 take on many other coal operators and

sell powder outside of the coal operators who were stockholders? A. No, I don't recollect that. My recollection of the thing—it is all pretty big memory—as to what a man did with his business; I just—the impression that I have of that business is that they continued pretty moderately supplying their own stockholders. Sternberger was one of them for some time. I think Sternberger sold to his friend Williard up at Superior a little powder, but it didn't amount to much, for a year or so, and
3947 then they spread out pretty largely.

Mr. Button (reading): A. 168:

"Cincinnati, Dec. 14/95.

The Hazard Powder Co.,
New York City.

Dear Sirs:

3948 We have your favor 12th inst., advising that Morley Bros. about three months ago purchased a carload of Blasting Powder from Indiana Powder Company at $1.25 per keg, delivered; that they have recently ordered another car but there is delay in getting it.

Mr. Talley made a social call at our office yesterday and in reply to inquiries stated they were making about 600 kegs per day and are now about 11,000 kegs behind on orders. Mr. Rood was in the City last week and called on us. He stated their average for Nov. was 547 kegs per day. They have delivered this year about 70,000 kegs by wagon at a cost of less than 2½ cents per keg. He is feeling very well over their busi-

ness and stated that he had purchased 4,000 kegs from the Equitable Powder Mills to fill orders that he was not able to meet from their mills. He did not mention the price. I was absent when he called, but get these figures from the office force. They have been doing a very nice business in Southern Illinois.

Truly yours,
R. S. Waddell, Agt."

3950

Q. Well, here in December, 1898, they had extended considerably, hadn't they? A. About a year after they were built——

Q. Well—— A. But they hadn't extended very much then.

Q. Southern Illinois, did he have any stockholders in Southern Illinois that you remember? A. Peabody was associated with him; he was the Southern Illinois end of it; I don't know just what the stockholders there were doing.

Q. At any rate, they were doing a very nice business in Southern Illinois at this time, were they not, December, 1898? A. Yes, but they could not supply their own people. 3951

Q. Now in January, 1899, did you write this letter (handing paper to witness)? A. That is my signature.

(Letter is offered in evidence and marked Exhibit A-170.)

Mr. Button (reading): A. 170:

"Cincinnati, Jan. 25th/99.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

In regard to the method of fighting the

Indiana Powder Company. There are six places that I would attack. Three of these from a depot of supplies located midway between Brazil and Rosedale, Indiana. At this point I would locate a large magazine and either hire or buy a team to supply the mines of Mr. Tally at Fontanet and Carbon, where they consume about 25,000 kegs per year; Rosedale, where are located the mines of the Parke County Coal Co., and Otter
3953 Creek Coal Co.; and Brazil, in the neighborhood of which are located the mines of Zeller & McCellan and other stockholders of Rood's mill.

A first class man could be hired to sell powder direct to the miners, circulars could be issued and distributed, through the district, and I would recommend a retail price of 75c. per keg. Circulars could be printed announcing that the wagon would call at Rosedale and Mecca on Monday; Eureka
3954 and Fontanet on Tuesday; Carbon and other points on Wednesday; and the latter part of the week at Brazil mines. The longest drive would not exceed 20 miles as a round trip. Small portable magazines holding 200 or 300 kegs should be stationed at each of these points under the care of some merchant or employee. Sales to be made for cash only. We possibly would not sell a very great deal of powder, but it would fix the price for Mr. Talley, Joe Martin and others.

The other three points for attack would be the mines of the Superior Coal Co., near Jackson, Ohio; David Ingle, at Ayreshire, Indiana; and the St. Bernard Coal Co. at Erlington, Ky. The Jackson and Erlington

trade would be easily attacked. The assault on the Sternberger trade at Jackson should be carefully planned so as not to injure other Powder companies in that locality. This, however, can be readily managed. I would not consider a proposition to attack Mr. Talley without hitting Sternberger. The latter is a great promoter and is really the moving spirit in the growth and ambitions of the Indiana Powder Co. He enjoys a 3956
very handsome profit on powder and I believe can be made to suffer as much as any of them, except, perhaps, Mr. Talley.

Whoever undertakes this work should manage it judiciously and I believe it will create a prejudice in the minds of other coal operators against Mr. Talley because of his action in going outside a legitimate coal business to antagonize powder manufacturers.

There is a possibility that Peabody of Illinois may also need attention and perhaps 3957
a little work with the Halliday mines or what is known as Big Muddy in Southern Illinois would not be amiss. I was in the employ of Halliday Bros. for a year and understand their weaknesses very well.

The sooner you enter this field and execute the work the lighter the burden will be. It will serve two purposes: one, to regain your trade, the other as a discipline to coal operators to keep within the just limit of their business. I believe it will not cost as much as you anticipate, to accomplish all the results desired, and because the sales would not be very heavy I would recommend that the price be made low. The coal operator has three or four questions to decide:

3958 1st. Will he permit his miners to buy the other powder and continue work at his mines? If not, our price should be very low as the miner will be compelled and will consent to pay the operator a reasonable profit above our asking price.

2nd. If the operator decides to let the miners buy from us, it necessitates closing of their mill or forcing them into the foreign markets with the implied threat following it, that purchases of that brand will result in the destruction of profits for the operator who handles it.

3959

3rd. If it is decided by the operator to permit his miner to purchase the older brands, then he must furnish him the cash to do this. No accounts should be opened with any individual, either directly or through agents stationed at the different points. It should be purely a cash transaction.

I would recommend a severely low price at the start and not a gradual reduction. It would have the appearance of retaliation and be a severer discipline than if the reduction were gradual. Mr. Rood estimates his powder cost his stockholders less than 70c. I would take this into consideration. He may go into the retailing of powder by wagons in competition and the operator decide to discontinue the handling, leaving his miner to depend on the antagonized powder companies, with his preference in collections given to Mr. Rood. In that event it would be the outside companies against the Indiana, and the fight should be a short and sharp one.

3960

My reason for recommending a wagon ar-

rangement is that it will prevent the spread of retail prices to other mines and there will be no difficulty in keeping the fight within the proper limits of the stockholders of the Indiana Powder Co. I imagine after these six points are covered, there will be some small stockholders whose holding will be for sale before the trouble reaches them.

Yours very truly,

3962

R. S. Waddell, Agt."

Q. That was in January, 1899. Therefore up to that time there had been no attempt to sell powder direct to the miners, had there, Mr. Waddell? A. No.

Q. And this was your recommendation at that date, was it not? A. That was my recommendation and I would make the same today.

Q. And this was a recommendation that they sell to these miners at seventy-five cents a keg; did the du Pont Company ever adopt that recommendation? A. No. 3963

Q. The most they ever did was later to organize the Great Northern Supply Company and sell to the miners at $1.25 a keg, was it not? A. Yes, but they extended it beyond what they should have done.

Q. Oh! A. I was opposing there——

Q. Well, now just answer the question, Mr. Waddell; we will get to the Great Northern period later, A. All right.

Q. And this was the same suggestion that you had made three days after Mr. Rood resigned, was it not, a year and a half before? A. Same suggestion—the same one that the powder companies have used in Ohio.

Q. Ohio? A. Yes, and it was not new.

Q. Now, you also recognized the fact in this letter, do you not, Mr. Waddell, that the sale of a small amount of powder will fix the price for the rest of it when you say: We possibly would not sell a very great deal of powder, but it would fix the price for Mr. Talley, J. Martin and others? A. Yes, I think the miners would stay with the operators for the major part of it.

3965 Q. Will you not admit, Mr. Waddell, that the powder market is such that the consumers are so situated that if any one comes along and sells them powder in a certain district at a cut price that that demoralizes that district and that the rest of them have to come down, isn't that true? A. No, not always.

Q. It is not; did you write this letter in February, 1899, Mr. Waddell (handing paper to witness)? A. That is my signature.

(Paper received in evidence and marked
3966 Exhibit A-171.)

Q. Before reading this I will ask you if it is not a fact, Mr. Waddell, that the Great Northern Supply Company itself after it began selling powder at $1.25 never amounted to anything in particular in that district, isn't that true? A. No, they did amount to a good deal.

Q. Isn't it true that they never bothered Rood particularly or hurt his business particularly? A. Never bothered him! Why certainly not. They bothered him all the time.

Q. You think they hurt his business particularly? A. Yes, I do.

Mr. Button (reading A-171):

"Cincinnati, Feb. 27/99.

The Hazard Powder Co.,
New York City.

Dear Sirs:

Mr. Cannon, the Hazard agent at Charleston, West Va., visited our office today and reports that he met Mr. Rood and Mr. Talley at the Grand Hotel, this city. Mr. Rood 3968
told Mr. Cannon that they were just putting in the machinery to a little more than double their plant; that in a few weeks they will have a capacity to turn out 1,400 kegs per day and that he expected to market a good share on Kanawha and New River; that they have a freight rate to these points of 35 cents per cwt. and as their mills are located on the Big Four R. R., which is under the same management as the C. & O., that they will have special advantages for 3969
the West Va. trade. Mr. Rood and Mr. Talley were here to see about machinery and left at one o'clock today. Mr. Rood told Mr. Cannon he would like to use his services for the sale of their product to the Kanawha and New River trade.

Truly yours,

R. S. Waddell, Agt."

Q. Did they enlarge their plant? A. What time is that?

Q. February, 1899. A. '99, February—yes, they did enlarge the plant.

Q. And then they went to selling the West Vir-

ginia trade on the Kanawha and New River, didn't they? A. It took some six or eight months to enlarge; that made about two years; that is my recollection, about two years after they started.

Q. Yes. A. Yes, when they retailed powder there they drove Rood out and he hunted other markets.

Mr. Button: I move to strike that answer out.

The Court: Yes, it is not responsive.

3971

Q. Now, did you write this letter in September, 1899, to the du Pont Company from Mr. Keeler, enclosing a letter from Mr. Keeler—or a copy of a letter from Mr. Keeler and a copy of your reply (handing papers to witness)? A. That is my signature.

(Papers offered in evidence and marked Exhibits A-172, A-173 and A-174.)

Mr. Button: Reading A-172:

3972

"Cincinnati, Sept. 26th/99.

Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

Herewith I hand you copy of letter from Mr. Chas. F. Keeler of Chicago, to which he attaches the original contract we made with him under date of June 2nd, 1897. I have made reply to Mr. Keeler as per enclosed carbon copy; have also wired you message reading:

'Keeler writes returning contract canceled. In self preservation will provide

against further reduction by us while opportunity is open to him.'
and now confirm. If there is anything further you desire us to say to Mr. Keeler, we shall be pleased to have your advises and will act accordingly.

Yours very truly,
Enclosure. R. S. Waddell, Agt."

Q. Mr. Keeler's letter and your reply, you say 3974
you do not know whether those are the ones or not?
A. I should think they were, if I attached them they are correct.

Mr. Button: I don't know that I care to read them at this time.

Q. Therefore Mr. Keeler, the original contract man as you have called him, who had made a contract for five years, only got tied up for two years, did he, Mr. Waddell? A. I don't know whether it was for five years or for two years, but I thought 3975
it was for five years.

Q. It was for five years, was it not, as shown by your correspondence that was read the other day?
A. Well, I can't recall all that correspondence.

Q. Assuming that fact, which I think is shown by the record, and despite the fact that he had a contract for five years when he got around to it and didn't want to buy any more powder, he then sent the contract back, didn't it, and didn't buy any more? A. He didn't evidently——

Q. And that is the way most of these people got tied up under contract, wasn't it, Mr. Waddell?
A. There were some men that didn't regard the contracts as binding and would buy outside, but nearly all of them—certainly all of Illinois, regarded them as morally binding.

Q. That is, any one within the immediate radius of the Buckeye Powder Company was sure to keep his contract, is that the idea? A. Well, there was a little higher standard in Illinois among the operators than there was in some other sections.

Q. Did you write this letter to the Hazard Company enclosing correspondence between yourself and Mr. Tenant (handing papers to witness)? A. That is my signature.

3977

(Papers received in evidence and marked Exhibits A-175, A-176 and A-177.)

Mr. Abbott: If your Honor please, I object; your Honor will pardon me, but I think that these letters, that is attached letters, should be read in connection with the others.

Mr. Button: I haven't the slightest objection; I am just trying to save time.

(Reading A-173 and A-174.)

"Sept. 26th/99.

3978

Mr. Chas. F. Keeler,
First National Bank Bldg.,
Chicago, Ill.

Dear Sir:

We have your valued favor of 21st inst., and regret to learn of the action you have decided to take in regard to powder supplies. We will forward your letter to Messrs. du Pont and await their advices in the matter when it is possible we may have something further to say to you.

Yours very truly."

3979

"Chicago, Ill., Sept. 21/99.

R. S. Waddell, Esq.,
Gen'l Agent Messrs. E. I.
du Pont de Nemours & Co.,
First National Bank Bldg.,
Cincinnati, Ohio.

Dear Sir:

3980 Your esteemed favor of September 20th received. Enclosed please find contract with your company returned canceled. Your construction upon the same leaves it without any benefit and entirely useless to me, as you say your contract provides that 'we guarantee, under conditions named, against any price made by ourselves in the Indiana district.' As you have made a $1.25 price and that by the keg, I feel that you are not keeping your agreement with me and I also feel at liberty to provide myself against your re-
3981 duction as made while I have the opportunity of doing so, as you are liable to make your price away below $1.25, and it is a matter of self-preservation to me as well as to the other operators handling Trust powder, to protect ourselves. I have about 400 kegs on hand and as you have paid the freight on this powder I will not ask you to receive it back, but will sell it and account for it as agreed upon. Our relations in the past have been of the most pleasant character and I regret this step, and I will say candidly that whoever allowed powder to go to the men at $1.25 per keg in the block district has made a grand mistake. My consumption of powder after October next will [illegible]

more than double what it has ever been before, with a prospect of a steady increase, and you are simply driving every man in the district that handles Trust powder to the same course that I am taking.

Yours truly,

Chas. F. Keeler.

3983 At the meeting in Brazil Saturday the miners claim du Pont had made a proposition to contract with them direct at $1.25 for five or ten years. Goodby.

Chas. F. Wheeler."

Q. All that means is that Mr. Keeler had found that the Great Northern Supply Company was selling to miners around there at $1.25 and he thought that you ought to reduce his price from $1.10 down to about seventy cents, so that his profit wouldn't
3984 be cut, isn't that it, Mr. Waddell? A. He states that there was a clause in his contract that we were to guarantee him against any price that we made in that district, and he knew that we were making the price too——

Q. And his price was $1.10 and the lowest price you made in the district was $1.25, wasn't it, and he put that interpretation on that situation in order to get out of his contract, didn't he? A. Well, he had a margin of so much and we didn't guarantee his margins.

Q. Take anybody's profit except his; that was the idea, wasn't it? A. Well, he was right about it I guess.

Mr. Button (reading A-175 and A-176 and A-177):

"Cincinnati, Dec. 2/99.

The Hazard Powder Co.,
New York, N. Y.

Dear Sirs:

Herewith I hand you copy of letter from Mr. R. S. Tennant, President and former partner of Mr. Talley in the coal business. He has a contract with Hazard at $1.10 3986
but some time ago refused to take supplies from us at this figure. Deeming that this is the opportunity to show firmness, and that Tenant is a lawyer and colleague of Talley, Marshall et al., he is the business medium through which we could state the case and that it can be handled better on paper than orally, I have written Mr. Tennant letter as per enclosed copy.

I will be out of the city major part of next week returning here Thursday or Friday. 3987
If you have any instructions please give them to me by the 10th inst.

Truly yours,

Enclosures. R. S. Waddell, Agt.
D."

(Copy)

Terre Haute, Ind. Dec. 1/99.

R. S. Waddell, Agt.,
Cincinnati, O.
Dear Sir:

I would like to have a conference with you on the Powder business. I believe all

3988 *R. S. Waddell—Cross*

the operators on the Vandalia R. R. would join me in the Agreement to buy all their supply of powder from you from now until the first of April next, if you will agree to sell us at $1.10 net and withdraw the powder houses from the vicinity of these mines. If it strikes you favorably would it be possible for you to meet me at Indianapolis for a conference?

3989 Please regard this as confidential.

Yours truly,

R. S. Tennant,
President."

"Dec. 2/99.

R. S. Tennant, Esq., Prest.,
Indiana Bituminous Coal Co.,
Terre Haute, Ind.

3990 Dear Sir:

I have your favor 1st inst. I leave Sunday morning for a trip into southern Illinois which will take me out of the City for about five days of next week. It would be impossible for me to arrange an interview with you before December 12th. I feel however that the efforts you suggest would be futile. One Powder Co., cuts a very little figure. The issue that has been made up is so far reaching and destructive that arguments count for nothing. The Coal operators of Indiana or a dominant faction have in effect attempted to absorb the business of Powder manufacturers whose machinery must rust while the coal operators

3991

monopolize the powder business which this machinery was made to manufacture. Suppose this were extended to include all coal operators in the United States, millions of dollars invested in powder machinery would be wasted. I can see very clearly that conferences would be of no avail. To my mind powder manufacturers must contend for their rights and either defend their business or surrender it. Times are now very good and it is exceedingly fortunate that there is a good demand for powder, otherwise, matters would be worse than they are.

3992

Judging the situation in the most hopeful way I believe the retail price of powder will never be better than it is at present in the Indiana coal fields. It may be much lower. No doubt it will result in retailing powder at the lowest carload rate and a contract for a term of years. Pennsylvania coal operators made the same venture and ruined a very profitable powder business for the best portion of the State. If all the powder in the Terre Haute, Brazil, Linton districts aggregates 200,000 kegs per year, and the net profit at retail prior to the building of Indiana Powder mills was 75c per keg, that mill has cost the coal operators $150,000 per year. Before the mill was built I suggested the sale of 51/100 of the stock to one or more of the powder companies and time will demonstrate that had this suggestion been heeded the action would have proved a wise one. It must be apparent that the powder manufacturers are losing nothing on what they may sell in Indiana. It is unfortunate that coal operators must

3993

3994 *R. S. Waddell—Cross*

stand the losses resulting from destruction of retail profits which were very generally earned on the capital of the powder companies. The powder was not paid for until sold. It now looks like that either the powder companies or the operator in the powder business would have to surrender. It would have been vastly better that this occurred before conditions became absolutely permanent. In twenty years' experience I
3995 have never heard of a suggestion of powder manufacturers abandoning their business to people who are attempting to monopolize it and I do not believe such result will ever occur.

Regret that I cannot meet you next week, but if the 12th would suit you, would be pleased to confer with you and do all we can toward adjusting matters.

Powder companies will always do some business in the Terre Haute field and I do
3996 not believe they would part with their independence in selling any one they choose if they were guaranteed all of the business not represented by the Indiana Powder Company's stock. They cannot afford to play favorites, and after all what difference does it make whether they sell their powder at retail or by the car load. I have said all this in kindness to the operator. It is our mission to sell powder and we will be delighted as sales agents to have the trade of Indiana operators. These are merely personal arguments. The statements are plain and I hope you will receive them as coming from one who holds no moneyed interest in the powder business and who deplores the

unfortunate conditions in Indiana. Will be glad to hear your side of the case and if you request will meet you Tuesday 12th inst.

Truly yours,

R. S. Waddell, Agt."

Q. This is the same Tennant, Mr. Waddell, who has testified in this case? A. Yes.

Q. Whose deposition has here been read? A. 3998
Yes.

Q. And these were your views on the situation in December, 1899, were they? A. Yes, and are today exactly the same.

Q. About how the Indiana Powder Company had captured about all the trade in Indiana by cutting prices, hadn't they, in December, 1899? A. I don't know, December, 1899, that is about two years after they started?

Q. Yes. A. Yes, they began to spread out then, I think.

Q. Well, like all other new companies, they had 3999
seen fit to reduce the price and capture all the trade they could from the older companies, did they not? A. They resented the fight that we were making on them at that time.

Q. It strikes me from your letters, that you resented the fight that they were making on you, was not that the situation, Mr. Waddell, as shown by your correspondence? A. I never believed that the coal operators had a right to be in the powder business any more than the Standard Oil in the tobacco business.

Mr. Button: Will you please mark this letter?

4000 *R. S. Waddell—Cross*

(Same received in evidence and marked Defendants' Exhibit A-178.)

(Reading): "Cincinnati, Dec. 8, 1899.

The Hazard Powder Co.,
New York City.

Dear Sirs: Replying to your favor 6th inst. which came during this writer's absence. We desired some time to confer with
4001 Harder & Hafer and with Mr. Alward before advising you definitely, therefore asked the office to wire you as per our message 6th inst.

Harder & Hafer can buy powder at $1.10 from the Indiana Powder Co. It is evidently the intention of the Associated Companies not to meet any price made by the Indiana Powder Co. unless it be upon Miami brand, nor to vary the strict on contract conditions in and about Terre Haute. As
4002 nearly all the trade in that locality has been surrendered to Indiana Powder Co., Mr. Tennant having left us under a contract at $1.10, I think it would be better to turn this trade all over to Mr. Rood rather than wrangle with associates or lay the foundation for gambling and complaint on the part of the buyers.

I suggested a $1.10 price to Harder & Hafer because they have been such staunch friends of Hazard and are not favorable to Indiana Powder mills. My feeling is that we should either sell Harder & Hafer at $1.10 or not solicit their business. I will ask Mr. Alward's opinion before taking up the subject with Harder & Hafer. Three

or four thousand kegs per year will not help Mr. Rood much, although the freight is light, and by dealing fairly with Harder & Hafer there may come a time when we could sell them again. I will write you further after talking with Mr. Alward.

Truly yours,

R. S. Waddell, Agt." 4004

Q. Consequently this $1.10 price that the Indiana Powder Company had made was lower than your price at that day, wasn't it, Mr. Waddell, and you were asking permission to meet it? A. I understood they had a contract with Tennant for $1.10 from the preceding letter that you have read.

Q. I understand. A. I don't know as to prices, exactly.

Q. Possibly. A. I know that the other operators who were not in the Indiana Company but were 4005
located in the Indiana district, and whose miners were affected by this reduction to $1.25, resented our action there in lowering the price, or retailing powder, and they went to Rood. That drove them all into Rood's hands.

Q. Does not that indicate to you that he, Rood, had cut the price, as he says, "as nearly all the trade in that locality has been surrendered to Indiana Powder Company, Mr. Tennant having left us under a contract at $1.10"? That looks as if he had made a contract with the Indiana at $1.10, doesn't it? A. No, I think he left us with a contract of $1.10.

Q. "I think it would be better to turn this trade all over to Mr. Rood rather than wrangle with as-

4006 *R. S. Waddell—Cross*

sociates——" and you say "Harder & Hafer can buy powder at $1.10 from the Indiana Powder Company." That looks as if your price had been more than that theretofore, doesn't it, Mr. Waddell? A. Their price had been up, I think, to June 2, 1897—up to that time the price in that district had been $1.25 and I made a contract with Keeler at $1.10.

Q. I am talking about December, 1899, is not that true from this statement, "My feeling is that
4007 we should either sell Harder & Hafer at $1.10 or not solicit their business"? Have you any doubt that your price to that concern had been more than that at that date, from that statement? A. I don't know what that was; I had sold two years before that at $1.10 to Keeler.

Q. I understand, but that was at his request, because he said he didn't want to go in with them, is not that correct? A. Yes, and we cut the price from $1.25 to $1.10 at that time in that contract.

Q. Whose price? A. The price of the Associated
4008 Powder Companies at $1.35.

Q. And that was before Mr. Rood had ever made a price to anybody, wasn't it? A. I don't know whether he made a price or not, it was before he made any powder.

Q. Or, rather, it was at the time that he had made a contract with his stockholders to sell them at $1.10, wasn't it? A. With his own stockholders.

Q. Well, now, you don't know whether that Keeler contract was before or after, or rather, you do know it was after that arrangement made by Mr. Rood with his prospective business, don't you? A. Yes, I think it was after.

Q. Well, I show you a letter of December 11, 1899, and ask you if you wrote that (handing witness paper)? A. That is my signature.

Mr. Button: Please mark it.

(Same received in evidence and marked Defendant's Exhibit A-179.)

(Reading): "Cincinnati, Dec. 11, 1899.

The Hazard Powder Co.,

New York City.

Dear Sirs: Yours 8th inst. regarding Harder & Hafer's trade is received. This business will naturally go to Mr. Rood at $1.10 and I should prefer to let it take this course rather than offer Harder & Hafer a rebate of five cents and ten cents per keg. It may be that they will conclude to buy from us at $1.25 per keg without contract. That of course is their privilege. I will await reply to the letter. We mail them today before deciding as to the order you have on file. 4010

Yours truly, R. S. Waddell, Agt."

Q. This is Exhibit A-179. Consequently your price to this concern mentioned in the last letter I read was $1.25, was it not, Mr. Waddell? A. Yes, or $1.10 on the contract. 4011

Q. Now, in the next month or two in February and April, 1900, did you write these two letters (handing papers to witness)? A. That is my signature (indicating). I don't know about this (indicating). Somebody else has written this; I do not make an "R" that way (indicating).

Q. Well, do you know whose handwriting——

Mr. Abbott: Will you have that one marked, Mr. Button, so that we may know which one he is talking about?

Mr. Button: Mark that one April 11, 1900.

(Same received in evidence and marked

4012 *R. S. Waddell—Cross*

Defendants' Exhibit A-180.)

Mr. Button: And this also of February 9, 1900.

(Same received in evidence and marked Defendants' Exhibit A-181.)

Q. In regard to Exhibit A-180, you say you are in doubt about your signature there. Won't you look at the rest of the writing there and state whether it is not in your handwriting, this memorandum on the bottom (handing paper to witness)? A. Possibly, if I read the letter I could recollect it.

4013

Q. All right, look it over. A. (reading) I think I wrote that letter, and somebody else signed it for me, it is just such a letter as I would write.

Mr. Button: This first one is A-181, dated February 9, 1900, to the Hazard Company. (Reading):

"Dear Sirs: Two or three days ago we had a letter from R. S. Tennant, requesting shipment of 100 kegs temporary supply to Silverwood, Ind., where he has a new mine just opened. I declined to ship except he has a carload order; then he must pay the freight from Indianapolis. He orders a carload, 400 kegs. This would indicate that Tennant is not in harmony with the Indiana Powder Co., or that the latter have withdrawn their $1.05 price to him. They were giving him 5% discount from $1.10; 30 days time. We send you formal order for this to-day. Mr. Tennant wires us to rush this and as it is one F grain we presume you can give reasonably prompt shipment.

4014

Very truly yours,

R. S. Waddell, Agt."

Q. Consequently, if the other letter does indicate that you had a contract at $1.10, with Tennant, this shows that the Indiana were offering him at $1.05, doesn't it? A. Five per cent. discount for cash, yes. 4015

Mr. Button: The other letter, April 11, 1900 (reading): "Messrs. E. I. du Pont de Nemours & Co., Wilmington, Del.

Dear Sirs: I have wired you message this date reading: 4016

'Indiana Powder Company proposition last week to operators: Latter become profit sharers above a figure covering cost production, salaries, expenses, losses, and small percentage on capital. With guarantee cost to operators shall not exceed one dollar and probably be eighty-five cents. Particulars mailed.'

and now confirm.

Mr. Alward met Mr. Wm. Archbold, a coal operator near Evansville, Ind., and learned that this offer had been made to the operators near that city. He stated it was his understanding that the offer was good for other operators and I assume that this is the basis on which the powder business is to be conducted by Indiana Powder Co. It means that the coal operators of the state who are not in Indiana Powder Co. are to pool their business in favor of the Indiana Powder Co.; that the profits resulting from the manufacture of powder are to be given to the operators after a sufficient amount has been retained by the Indiana Powder Co. stockholders to cover their cost of manufacture, expense, salaries, profit and loss, and 4017

explosion losses, with a small percentage additional for the stockholders; the Indiana Powder Co. to guarantee that the price shall not exceed $1.00 per keg and probably be 85 cents.

Mr. Alward met Mr. Tennant on the train Monday night and was told that he believed the Powder question would be settled within one hour after the committee returned to Terre Haute on Tuesday. This means that
4019 if they fail to get a seventy-five cent price from you, they will accept an eighty-five cent to one dollar price from Indiana Powder Co.

Mr. Archbold replied to the Powder Co. that he had enough trouble in the coal business to employ all of his time and capital; he was not hunting for any in the Powder field. I think it is safe for you to conclude that the Indiana coal operators will pool their issues with the Indiana Powder Co.
4020 on the basis indicated in my telegram.

I believe you are already informed that the Indiana Powder Co. is putting in two additional wheel mills.

Truly yours, R. S. Waddell, Agt.

(The proposition is for 5 years.)"

Q. This is in April, the 11th, 1900, to the du Pont Company. Now, you never did make the 75-cent price, that is, the du Pont Company, did they, Mr. Waddell? A. No.

Q. And this was a proposition by Mr. Rood and his associates to sell powder at from 85 cents to one dollar to every coal operator in that country, wasn't it, practically? A. Well, it was the same

proposition as the Ohio Powder Company exactly.

Q. I don't know why you need to go back ten years every time you answer a question, Mr. Waddell. A. Mr. Rood knew the proposition of the Ohio, when they failed, were in failing circumstances, and he adopted the same methods.

Q. And this is, then, within a week or two of this time where it was shown that the du Pont's prices were $1.10 and $1.25 without contract, wasn't it? A. I don't know what the prices were, 4022
I could not give them to you from memory.

Q. This is back in April, 1900, about a year and one-third after you began to sell powder to the miners and indicates that that operation had discouraged and injured Mr. Rood very much, didn't it? A. Yes, it had discouraged him, he was willing to take 85 cents for the powder instead of $1.10.

Q. Discouraged him so much that he was putting in two additional wheel mills in April, 1900? A. I don't know when they were building that, my letters would indicate at the time that I knew.

Q. I will ask you to look at some of these, July 4023
31, 1900 (handing papers to witness)? A. That is my signature.

Mr. Button: Mark it, please.

(Same received in evidence and marked Defendants' Exhibits A-182 and A-183.)

Q. Now, in the summer or during 1900 and 1901, Mr. Waddell, was not Mr. F. J. Waddell at your office at Cincinnati? A. I think he was, I know he was there in 1901.

Q. There appear to be some letters during September, 1900, signed in your name with the initials "F. J. W.," and they set the conditions out there. Will you look at them and state whether they were signed with your authority or knowledge? A. I

4024 could not tell you that; I know that that is Fred's signature or my signature by Fred; he wrote it himself, and he did his own thinking; I would not go over all that he said perhaps. He was there, an independent thinker, and had been general agent in the Southern States, occupying an important office.

Q. Did you sign those two letters, one September 28th and the other November 7th (handing papers to witness)? A. That is my signature.

4025 Q. November 7th? A. That is my signature.

(Letters received in evidence and marked Exhibits A-184 and A-185.)

Mr. Button: Reading A-185:

"Cincinnati, Nov. 7/00.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

4026

Dear Sirs:

While at the Ocean City Club last evening where we received the election returns, I met Mr. Rood, Mr. Talley and Mr. Sternberger. The two former were the guests of Mr. Sternberger who is a member of our club.

I had quite an extended chat with Mr. Rood. He reported that his business is very satisfactory; that they have been running constantly and have had a ready market for all the powder they could make. He told me his average output of Dynamite is about 9000 pounds per day but that he has not operated his plant constantly. He stated

that he finds the demand good and that he has been making some money on dynamite.

Mr. Talley is rather belligerent and Sternberger puts on a very independent air. I did not discuss the Powder business with either of them.

Mr. Rood talked quite freely. He does not attach much importance to the adverse work of Great Northern Supply Co.

4023

Truly yours,

R. S. Waddell, Agt."

(Mr. Button interrupted his reading of Exhibit 182 with the following question, which he began at this point.)

Q. That was a cut price, July 31st, 1900, wasn't it, Mr. Waddell, in Kentucky? A. $1.20.

Q. In Kentucky? A. Rash had a price of $1.10.

Q. I know, but—— A. He was a stockholder and director in the Indiana Powder Company. 4029

Q. I know, but he was selling. The statement in this letter is that Rash was retailing or was selling powder at $1.20, I suppose, powder he bought from the Indiana Powder Company. Now, my question is, was this $1.20 not lower than the price that the du Pont Company was charging in Kentucky at that date? A. What is the date, please?

Q. July 31st, 1900. A. I don't know what we were doing down there.

Q. Well, here is Baird's letter; it is dated July 23d: "Since I last wrote you, Mr. Rood of the Indiana Powder Company has been here canvassing the coal mines—do you know what success he had in this city? He also canvassed the mines in Ken-

4030 tucky in a radius of fifty or eighty miles of this city. He told me that he sold five or six cars of powder in Kentucky. Whether he did or did not is more than I know. He also told me that he sold the John Ingle Coal Company some powder. I asked Ingle if he bought any and he said 'no'; but I rather think that he did, as his brother David is the V. P. of Indiana Powder Company. I write this so you will know what is going on in this locality. If there is any cut in prices I want
4031 you to keep me posted and give me the benefit, for I cannot hold my trade if other parties get du Pont powder cheaper than I. Please give me your views on the subject and oblige." Well, Rood was then selling or trying to sell powder through Kentucky at that date, was he not, Mr. Waddell? A. I think I stated at that time that I didn't believe his statements that he had been—in the first letter that you read there.

Q. No, Mr. Baird said that he didn't believe his statement in regard to Ingle was true? A. As I
4032 recollect the first letter you read was my statement that I didn't believe Rood; of course, I am just listening to it; it is pretty difficult.

Q. My question, Mr. Waddell, wasn't what was said in the letter; I am asking you now——

Mr. Abbott: That is it.

Q. Of course, it is it; it was not what you said in the letter; I am asking you as a fact whether you know whether Rood was selling through Kentucky at that time? A. No.

Q. You don't know? A. No, I cannot tell you now.

Q. I don't see anything in this letter which I have read that indicates that you didn't believe

it at that date. I will read the letter again: it is short: "Herewith I hand you copy of letter from Mr. L. M. Baird, Evansville, Indiana, advising that Rood has been canvassing the coal trade of Evansville. He appears to have gone to Mr. Baird for the purpose of sending some information to us. We are not able to verify his reports of large sales in Kentucky unless they have been made to Reinecke Coal Company and others in the vicinity of Madisonville. We are told these sales were 4034
made by Mr. Rash, one of the Indiana Stockholders, and the price was $1.20." Then you did know he had been selling in the vicinity of Madisonville? A. No, I knew Mr. Rash had been selling there and I wasn't able to verify Mr. Rood's statement.

Q. All right.

(Mr. Button reads Exhibit A-185 at this point.)

Q. Had Rood gone into the dynamite business, 4035
too, Mr. Waddell? A. Yes.

Q. Do you know when he began that? A. No, I don't; his son built a dynamite plant.

Q. Now, you say in regard to these letters signed by your brother that sometimes you disagreed with what he wrote, is that what you mean? A. Yes, we didn't always agree; he expressed his own views, made his own arguments, acted independently of me.

Q. Well, do you know that the price that was being charged by the Indiana Powder Company through that district in December, 1900, was uniformly five cents below the du Pont price? A. No, I don't know that.

Q. Won't you read that letter and see if you can refresh your recollection upon that subject?

A. (After reading.) This refers entirely to trade that I knew little or nothing about down in Southeastern Kentucky, Tennessee and Alabama, trade that had been handled by Fred—I am not familiar with it all.

Q. You mean that there was trade being attended to right there in your Cincinnati office and you weren't at all familiar with it? A. The Cincinnati office was a consolidation of the Cincinnati territory in Chattanooga; my brother was
4037 brought there to handle the Chattanooga end of it; he was more familiar with that and I didn't interfere with his business any more than he did with mine.

Q. Then there was such trade being handled right there in your own office that you were not familiar with, wasn't there, in 1900? A. Oh, I might have been familiar with it in a general way; I presume these matters may have passed before me.

Q. You are not familiar enough with them to
4038 even say whether your brother was giving the right interpretation—the right information about it at that date, are you? A. No, I can't recollect.

Q. And this despite the fact that you are perfectly familiar with the entire condition of the powder trade in the United States as you have testified to here repeatedly? A. Well, I am in a general way, but to take a specific date and a specific price to one customer—I cannot tell that.

Q. That is not what my question was, Mr. Waddell. A. No man can remember that.

Q. My question was whether as a uniform thing the price in December, 1900, made by the Indiana Powder Company was not five cents lower than the du Pont price? A. Not a uniform thing, no.

(Letter last referred to is marked Exhibit A-186 for identification.)

Mr. Button: Reading A-184:

"Cincinnati, Sept. 28/1900.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs: 4040

Our mail of the past few days has conveyed to you information of cutting in price on Indiana Powder direct and through Hazard and duPont agencies at Louisville, to many Coal Companies. Among these I will mention—

The Taylor Coal Co. Beaver Dam, Ky.
The Pittsburgh Coal Co.
The Victoria " "
The Pitman " "
The Peacock " "
All of Pittsburgh, Kentucky. 4041

There are perhaps a dozen other cases now on record, and letters out from Mr. Semple of Louisville to all of the coal trade of Kentucky. It is a question whether the Associated Companies will sacrifice all this trade or meet the prices, thus provoking a powder war. I dread to see this condition, particularly in view of the heavy demand for powder.

The Great Northern Supply Co., is not organized to conduct a carload trade, nor is it in position to court the trade of the operators, as it has antagonized it. Under existing circumstances, I beg to repeat a recommendation that I made a year or two

ago, that, The Associated Companies all maintain prices on their respective brands, and set aside one mill, (preferably Phoenix) which shall be authorized to make powder and conduct the war now provoked by the Indiana Powder mills: The Associated Companies in their own private way, to stand in and share the profits and losses of the Phoenix business. Where they are about to lose trade to Indiana let them ad-
4043 vise Phoenix, and if preferred let Phoenix sell the powder for account of the powder Company whose trade is menaced. It would be better, however, to make the Phoenix Company wholly independent and furnish it information whenever it is essential to have trade defended. Good discretion and a vigorous fight with this mill, would save The Associated Companies a vast amount of money, because The Phoenix would have its limits and would be on an exact level with
4044 the Indiana Mills.

I would like to take charge of the marketing of their product for The Associated companies and conduct this fight against the Indiana Powder Co. in this territory. It is the only common sense way of meeting this issue and I wish The Associated Companies would lease these mills from their present owners and have them operated by some one under the direction of one or all of The Associates. This would narrow the fight to two brands The Indiana and Phoenix. What objection could there be to some individual like myself leasing the Phoenix mills and operating them as an independent plant? There would be no fear

of collusion, for nothing could be proved: But a very large amount of money could be saved by letting The Associated Companies maintain their prices on their own brands.

I hope you will consider this idea, for to me it seems the most reasonable solution of the question that must be settled very quickly and efficiently.

Yours very truly,

4046

R. S. Waddell, Agt."

Q. Did they ever lease you a Phoenix mill, Mr. Waddell? A. No.

Q. And they didn't carry out the slightest suggestion of yours, did they? A. No, they cut the prices generally.

Q. They what? A. They cut the prices generally over the territory.

Q. Well, now, you know that is not true, don't you, Mr. Waddell? A. No, I know it is true; the price went down to ninety cents. 4047

Q. This very letter that I have just read you says: "Our mail of the past few days has conveyed to you information of cutting in price of Indiana Powder direct and through Hazard and du Pont agents at Louisville to many coal companies." By that you meant that the Indiana Powder Company was selling direct at cut prices and also had taken on your Hazard and du Pont agencies and were selling it through them, didn't you? A. Yes.

Q. And at cut prices? A. That is one day. Now take the next day's letters or the next month's letters and you will find that I had the trade back again.

Q. You know the prices never went—— A. Just the same old story—see-sawing.

Q. See-sawing as in 1901 to 1906? A. See-sawing the price down; that is what they did.

Q. Where there wasn't any see-sawing, but the cutting was always by the new companies as it always is? A. If Rood had cut the price alone he would have had all the trade, but he didn't.

Q. You said he had it all in Indiana there in one of these later letters? A. Yes, around Terre Haute he had the advantage of it.

Q. By cutting it? A. We were obnoxious there.

4049 Q. You say: "Our mail of the past few days has conveyed to you information of cutting in prices on Indiana powder direct through these agents." Is this September 28th? Won't you look at these letters of September 4th, 20th and 27th, signed by your brother, and state whether or not those are the letters that you referred to here as being the ones that convey information of prices? A. I don't know whether those are the letters or whether mine, or a lot of other letters. I wrote daily to the Hazard Powder Company and to the du Pont

4050 when I was at the office sometimes as high as six or seven letters a day, but always one, but I only find a few of them here.

Q. Well, now, in the year 1901, you take the same position, do you, about letters signed by R. S. Waddell; Agent, F. J. W.; you don't know anything about them? A. Fred was independent of me in his actions. Unless I would know the subject I couldn't tell you.

Q. Well, about Mr. Foreman, per F., are you responsible (handing witness letter) for those letters? A. Foreman is a bookkeeper.

Q. Well, there is a letter signed by you of August 21st, is there not (handing paper to witness)? A. That is my signature.

Q. And another one of October 18, 1901. A.

The signature is mine, but the memorandum down there is somebody else.

Q. That is the letter of October 18, 1901? A. Yes.

Q. And October 25, 1901, that is your signature (handing witness letter)? A. That is my signature.

Mr. Button: We will have these three marked, please.

4052

(Letters admitted in evidence and marked A-187, A-188 and A-189.)

Q. And one of October 18, 1901 (handing witness letter)? A. That is my signature.

Q. And December 23, 1901 (handing witness letter)? A. That is my signature.

(Letters admitted in evidence and marked A-190, A-191 and A-192.)

Mr. Button: (Reading) A-189.

4053

"Cincinnati, August 21, 1901.

Messrs. E. I. duPont
de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Referring to our application of last week asking for special price for F. A. Blackwell & Company, Henderson, Ky.—we have been tendered an order by Blackwell & Co., for immediate acceptance, conditioned on our being able to name them a better price than $1.25 per keg.

As soon as the question has been deter-

4054 mined as to whether or not we can name this special price, please wire us and we may be able to hold the order in the meantime. They have been selling Indiana powder since that company has been cutting our price.

Yours very truly,

R. S. Waddell, Agt."

4055 Q. Consequently in August, 1901, the Indiana Powder Company had been previously cutting your price, hadn't it? A. Part of the time, yes. I wanted to take the trade back on the special rate.

Q. What? A. I wanted to take the trade back on a special price rate.

Q. That is, you wanted to get down somewhere near their price, didn't you? A. I wanted especially to get the business.

Q. It had been your business heretofore, hadn't it? A. Yes, I think we—well, we had had it alternately.

4056 Mr. Button (Reading Exhibits A-186 and A-187.)

"Cincinnati, Oct. 25th, 1901.

Messrs. E. I. duPont
de Nemours & Company,
Wilmington, Del.

Dear Sirs:

Messrs. W. B. Belknap & Company of Louisville Kentucky, (our agents) request a special price of $1.25 per keg for the Ould Grocery Company of Morton, Va.—and believe that they will be able to sell these people at that price. Their salesman informs

us that the Norton Coal Co., and the Ould Grocery Company, both of Norton, Va., are buying Indiana powder at $1.25 per keg.

We know that the Norton Coal Co. had a contract with the Indiana Powder Company expiring next March, but did not know the exact price.

Yours very truly,

R. S. Waddell, Agt." 4058

Q. Well, now, there your special price was $1.25 to meet the Indiana price of $1.25, wasn't it? A. That was what the salesman reported, yes.

Q. Well, you were not requesting permission to do anything more than come down to the Indiana price, were you, at what you understood it to be in this letter? A. I was requesting permission for the special price that would hold the business—whether it was—I never was a cutter.

Q. And your judgment that in October, 1901, was that all that would be required would be the same 4059 price which the Indiana Powder Company had made, was not that it? A. I wanted the price that would take the order.

Q. That is not an answer. A. And whether it was the same or a lower price, I couldn't tell.

Q. That is not an answer to the question, Mr. Waddell; I wish you would answer it. A. Let me have it.

(Question repeated.)

A. Well, I don't know in any particular case.

Q. I am talking about this case. A. Whether it was required or not?

Q. I am talking about this particular case that you wrote about on that day. A. That is what

Belknap's salesman told Belknap and Belknap wrote me, I cannot tell you——

Q. Don't get away from the question, Mr. Waddell. My question is that your judgment was that all you needed was a price which was equal to the Indiana price, which you understood to be $1.25—I don't care whether it was $1.25 or something else. A. I didn't have any judgment in the matter at all; I gave the du Ponts exactly what had been given me; that was Belknap's statement of what their
4061 salesman told them would be required, when I asked him. Now I had no judgment about it.

Q. That is, you had no judgment as to whether the Indiana price was $1.25 or not, is that what your recollection is? A. I don't know anything about it.

Q. Well, you did have some judgment on the question of whether you would get the trade at equal prices, didn't you? A. No, it was what Belknap wanted and I wanted to get it for him.

Q. Then your sub-agent or commission agent
4062 down there evidently understood that was all that was necessary, didn't he?

Mr. Abbott: If your Honor please, I think that is improper.

The Court: Yes.

Mr. Button: (Reading A-188.)

"Cincinnati, Oct. 18/1901.

Messrs. E. I. duPont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:

We asked Mr. Alward to call and discuss the Powder and Dynamite trade with

Emmons, Hawkins & Co., wholesale Hardware dealers at Huntington, West Va., who handle several carloads of Indiana powder and Indiana dynamite annually. Mr. Hawkins is very friendly to duPont powder. All of their shells, both Black and Smokeless are loaded with our brand. They stand ready at any time to meet the Indiana price on duPont Black powder and Hercules dynamite to change their business to us.

The Indiana price on Blasting powder is 4064
$1.10 per keg. I do not know the price on dynamite. That end of the business is so disgusting that it does not merit attention. Any time we attempt a sale of dynamite it causes friction, so we let it alone as far as possible. We can, however, re-gain the trade of Emmons, Hawkins & Co., if you think it advisable to make them a $1.10 price. Mr. Alwars recommends that we sell E. H. & Co., say 3,000 kegs at $1.10 per keg to be taken as their requirements de- 4065
mand. This would run them about eight or nine months.

Truly yours,

R. S. Waddell, Agt."

Q. That is in October, 1901, and that shows that you could get a customer away from the Indiana at equal price, doesn't it, Mr. Waddell? A. Emmons, Hawkins & Company were our agents, and had been for many years; mutual, personal friends of mine, and I think I could hold that trade at equal price.

Q. An exception, is that what you mean to imply? A. What is that?

4066 *R. S. Waddell—Cross*

Q. Did you mean to imply it was an exception? A. Yes.

Q. And you seriously maintain, do you, Mr. Waddell, that the du Pont Company was cutting the price of the Indiana Powder Company at that time? A. I know we alternated, yes, sir.

Q. You do? A. Certainly I do.

Q. Can you remember one instance in which you did? A. No, I don't remember an instance of the Indiana Powder Company selling, and I could not
4067 give you instances except as they are recalled here; but I know there were lots of them. They had a big trade over in the Pocahontas field and I took it away from them.

Q. Originally their trade? A. No, it was originally——

Mr. Button: Your counsel wants me to read these notations which you say you did not make, and I will read them on the bottom of the exhibits: "Emmons H. & Co.
4068 were ex-du Pont agents and late customers. Nothing 1900. Sold them 400 kegs 1899; 400 kegs 1898; nothing kegs 1897. In 1896 we sold them several carloads."

Q. Do you know anything about these notations? A. I don't know about any notations.

Q. And you say it is not your handwriting? A. I suppose it was handed to the bookkeeper or somebody else and he got hold of the letters and wrote on the notation.

Q. Now, you spoke of one instance which you recalled in which they made a price of 90 cents, I think, to the Washington Fuel Company. Where was that? A. It was at Farnsworth, Indiana.

Q. And you stated—— A. (Interrupting) That

was conditioned on the Fuel Company being willing to retail their powder to their miners at $1.25.

Q. That was another suggestion of yours, wasn't it? A. No.

Q. I show you a telegram (handing paper to witness). A. I don't think so.

Q. (Continuing) Dated August 31, 1899, and ask you if you sent that telegram? A. I don't know whether I sent it or not. If I have it I probably knew of the sale at Farnsworth, it is the same thing. 4070

Q. If you don't recollect that, I will ask you if this is your signature, August 31 (handing paper to witness)? A. That is my signature, yes.

Mr. Button: Will you mark this, please?

(Same received in evidence and marked Defendants' Exhibit A-193.)

Here are a couple more I have not read. October 18th, this is No. A-192. (Reading.)

4071

"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

Dear Sirs:—

I have a conditional order in hand that has been tendered to us by Thos. Henderson & Son, Ashland, Ky.—2500 kegs blasting powder if at $1.25 less a rebate of fifteen cents per keg; 2% for cash for ten days, to be taken as their next requirements demand. They have a supply of Indiana powder purchased to last them perhaps until the first of December as the Indiana Powder Co. have their order for 400 kegs now

en route from mills. If you can secure a $1.10 price to Henderson & Son, the same that they are paying Indiana Powder Company, please let me know as quickly as possible so that I can accept this order and bind the deal with them. They wish to be advised of our action in the matter as early as possible.

Truly yours,

4073 R. S. Waddell, Agt."

Q. Another exception—that you could hold trade with that concern at equal prices? A. They were good, loyal agents of ours.

Q. Another exception? A. Yes.

Mr. Button: This is dated December 23, 1901.

"Messrs. E. I. du Pont de Nemours & Co.,
Wilmington, Del.

4074 Dear Sirs: Enclosed I hand you copy of a letter from Mr. Alward commenting on Indiana Powder Company's efforts to secure small trade.

Truly yours,

Enclosures. R. S. Waddell, Agt."

Mr. Alward's letter to Mr. Waddell is:

"Columbus, O., Dec. 20, 1901.

R. S. Waddell, Agt.,
Cincinnati, O.

Dear Sir: I called to see Messrs. Long & King of Bellair to-day who should be

ready for a car about now. You understand they merely operate a mine belonging to the National Steel Co. and mine coal for the exclusive use of the National Steel Co.

The mine has been closed for a couple of months. The Steel Plant is using Natural Gas. It is expected that they will again operate the mine commencing some time in January or February.

Long & King are two laboring men. I was told they were reliable parties at the time I first sold them and the way they have been paying their bills is satisfactory. 4076

Mr. Rood for the Indiana Co. has called to see them twice with his $1.15 quotation. This I merely mention to show that the Indiana Co. are making a very close canvas of the trade. Long & King have never been solicited by any Powder Co. except Hazard and Indiana.

Very truly,

Alward." 4077

Q. Now, that language about Rood's calling to see them twice with his $1.15 quotation—does that refresh your recollection in any manner as to whose prices were lowest there, Mr. Waddell? A. No, it don't. I don't know anything about the items on particular days and particular people.

Mr. Button: Now this letter, A-193, dated August 31, 1899, to the du Pont Company:

"Dear Sirs: I to-day mail you letter from Mr. Keeler asking for powder at such a price as will enable him to retail at $1.25 per keg. Here is where your independent

4078 *R. S. Waddell—Cross*

mill, if you had one, would do good execution. If Kolsen, Keeler and others, independent of the Indiana Co. could be made a price of 85 cents on the condition that they should retail powder at $1.25 to all their miners, it would play havoc with the miners of Talley and Minshall and there would be more dissatisfaction than ever. This will force the break in retail prices while the
4079 consumption of Keeler and Kolsen would be small. This is a suggestion that is covered by Mr. Keeler's letter.

Truly yours,

R. S. Waddell, Agt.

(I wire the suggestion but you will no doubt conclude that time will do as well thro Gt. North.)"

4080 Q. Consequently you did make a suggestion of this kind of an arrangement which you say was made with the Washington Fuel Company, didn't you, Mr. Waddell? A. If you will give me the date of the Washington Fuel and compare it with this I——

Q. You gave me the date from your testimony on your direct examination as the latter part of 1899 or 1900 or first part of 1900, I think, in Volume 12, page 1680. A. Pardon me, you can get it quicker——

Q. I have got it right here. (Reading.) "Q. What was it that you knew about special prices that were made to that company? A. I knew that a special price had been made of 90 cents a keg. Q. I mean under what circumstances was that special price made? A. When was it? Q. Yes, when was

it? A. That was about the latter part of 1900, or the first of 1901, as I recall the date, and was made with relation to the contest that was going on in that district with the Indiana Powder Company Q. Well, now, then, stated the conditions under which those special prices were made? A. There was a condition that they should sell powder to their miners at a lower price than the State agreement fixed. Q. What was the amount that the State agreement fixed? A. $1.75 a keg. Q. And what was the price that was made a condition to this consumer that he should sell to his miners? A. He should sell that at $1.25 a keg." You say that the Washington Fuel contract was the latter part of 1900 or the first part of 1901. This letter is August 31, 1899, consequently you did make that suggestion, didn't you? A. I don't know; I don't know the date, the exact date of the other, it has not been fixed yet. 4082

Q. Would not you judge from this language of this, Mr. Waddell—just read that letter in which you say "This is a suggestion that is covered by Mr. Keeler's letter." And then your memorandum at the bottom of the page where you say "I wire the suggestion, but you will no doubt conclude that time will do as well thro Great North." Won't you look at that and then state whether this is an original suggestion of yours or not? A. This suggestion was made as it states was made in Keeler's letter. I don't know whether it was an original suggestion or a later one or when it came in without fixing the date. I know that I made the suggestion. 4083

Q. And you don't know that this was the first time that that suggestion had been made to the du Pont or Hazard Companies? A. No, I don't know that.

Q. Now, then, is this the telegram, I show you again, I showed it to you a few moments ago, that you referred to in this letter? A. Let's see the date, it bears the same date and I should guess that it was, I don't know.

Q. You cannot have any doubt about it, can you, Mr. Waddell? A. I will state here that I wired the suggestion and I presume that is the suggestion.

4085 Mr. Button: Will you mark the telegram?

(Same received in evidence and marked Defendants' Exhibit A-194.)

Mr. Button: This telegram is dated Cincinnati, Ohio, 8/31/1899. "To E. I du Pont & Co. Why not make Keeler & Kolsen a one eighty five price conditioned on their retailing at one twenty five to meet competition. Would cause dissatisfaction throughout district and break down retail prices hastening conclusion. R. S. Waddell."

4086 Q. That $1.85 is a mistake, isn't it, it means "85 cents," as per your letter, is that right? A. I don't know as to that.

Q. Your letter says it is 85 cents. A. My letter is right, whatever it is.

Q. Therefore, I will ask you again whether after reading that telegram you have any doubt but what this is your original suggestion to your principals? A. My original suggestion?

Q. Yes, and by that I mean this idea of selling some powder at a very low price, 85 or 90 cents, on condition that they would re-sell it to their miners at not to exceed $1.25, whether that was not originally suggested to your principals by yourself, that is what I want to know. A. I don't know.

Q. And after reading this letter and this tele-

gram you cannot say is that correct? A. I know that in that letter that I suggested it, that it be done, I don't know whether that is the original suggestion, I may have suggested it before.

Q. Then you still have doubt on that subject? A. I don't know anything about it.

Q. You thought so much of the suggestion on August 31, 1899, that you thought you had better wire it instead of writing it. A. Mr. Keeler had written me and I noted the Keeler letter and concluded I would wire it. I used the wire freely. 4088

Q. Now, when was that Indiana Powder Company purchased? A. They sold out to the Powder Company in January, 1902.

Q. Immediately, well, within a month or two after these letters that were mentioning prices at $1.10, $1.15 and $1.20, wasn't it? A. I don't recall those, those you held, the letter, and I did not get a chance——

Q. Haven't you any independent recollection of the prevailing prices immediatey before the Indiana sold out? A. General price, open price was 4089 $1.10, and I recall it, but there were specials of $1.05, $1.00 and on down to 90 cents.

Q. And this 90-cent price, that is the only one that you could recollect, and this was the one of the Washington Fuel Company, wasn't it? A. Now, that is all I recalled just at that time; I don't remember the people who had them.

Q. Now, then, the amount of this Indiana contest which you testified to is this, isn't it: That you made all of these suggestions about it, that is, you suggested they sell to the miners, you did that, didn't you? A. I suggested that they follow the same rule that they had followed in 1886 over in Iowa.

Q. You said that several times now, Mr. Wad-

DARK PAGE BLEED THRU

dell, and I understand it now, but you did suggest that they sell to the miners, didn't you, yes or no? A. I did.

Q. And you suggested that they follow and work along those lines against the Indiana Company, is that the meaning of it? A. They are not original with me, that is Mr. Colvin's suggestion, he originated that.

Q. I thought it was one of yours. You stated
4091 that in your letter. A. I stated that on a letter that I had been down looking up sites down there near Danville and then I wrote that letter.

Q. Didn't you write on April 28, 1897, the day the contract—or that Mr. Rood resigned—as follows on the subject—— A. Recommending the building of a mill.

Q. This is from your letter on page 4600 of the record, which letter was marked as an exhibit, but I will have to find the number in a few minutes. Didn't you write this: "Your policy has not been outlined, but I believe the most wholesome lesson
4092 would be to institute the methods of Shamokin, Pennsyvania. Erect a mill by one of the companies near Terre Haute—about the junction of the two railroads, then run a powder wagon through the villages of Carbon——" A. Powder wagon?

Q. Didn't you suggest the building of a mill down there to do that? A. Yes, and I had been down there and three or four weeks before that —yes, six weeks before that, and hunted up the sites and showed Mr. Colvin the sites when he came out a few days later.

Q. You suggested this, didn't you? A. I did not originate the suggestion.

Q. Then you suggested that you see Mr. Talley and try to buy 51 per cent. of the mill, didn't you? A. No, I don't think I suggested that, I think that

was Colvin's suggestion. I could not suggest what the Hazard Powder Company would do; I think I took the credit for that suggestion, however, in writing the du Ponts; but the offer would have to come from my principals, and not from me.

Q. Certainly. They would have to authorize it, and I am asking who suggested it. A. No, I think Mr. Colvin suggested that, but I tried to get the credit for it with the du Ponts, or rather I mentioned it in a letter.

Q. Now, let us see about that. A. I noted that as 4094 you read the letter the other day.

Q. You noted that you took the credit for it? A. Yes, that I wrote in my letter reporting to the du Ponts and said that in this conversation with Mr. Talley I had recommended that 51 per cent.—that was agreed upon between Mr. Colvin and I at the hotel before we went down there.

Q. Then you were taking credit that you were not entitled to, is that the idea? A. No, we had arranged what it should be and I was quoting what I said to Mr. Talley, and in that it made me re- 4095 sponsible for having originated it here, and I just as soon take the credit as to have someother man have it. It is a thing that I was there to do, that was my duty, it is what they were paying me for.

Q. I think I can find the letter. Do you recall one in which you made two suggestions, the first was that they sell to the miners and the second was that they should buy this 51 per cent., do you recollect that letter read here the other day? A. I recollect I did both, but whether in one letter or separate letters, I don't recollect now. Usually I wrote a separate letter as I said generally, but sometimes I would speak of two.

Q. Then you suggested that Keeler contract, did you not; he had written you and you wrote that to

4096 your principals and suggested that they do it? A. I sent it to them and asked them their pleasure in the matter.

Q. And you urged this fighting as was read here, didn't you? A. Urged it?

Q. Yes. A. No, I don't recall that I did that.

Q. Don't recall that? A. I sent it to them and asked them their instructions.

Q. Then you made a long proposal, that they sell to the associated powder companies through one
4097 agency out there, didn't you, to save expenses? A. That letter on economy for the people?

Q. Yes. A. Yes, and give the people the benefit of the price.

Q. Then on repeated instances, you urged that they sell powder to the miners at 75 cents or 80 cents instead of $1.25, didn't you? A. That is to the miners of the stockholders of the Indiana Powder Company only.

Q. And you suggested, at least in some instances, the making of these contracts on condition that the
4098 consumer would re-sell to his miners not to exceed $1.25, didn't you? A. No, I don't recollect that I originated that.

Q. You recommended it in some instances, as we have just shown here? A. That letter there recommended it, yes.

Q. Now, going back several days to the time when you said that you never made any suggestions when not asked for, do you still make that statement, Mr. Waddell?

Mr. Abbott: If your Honor please, I have no recollection that the witness has made such a general statement as that. He has made the statement in reference to prices and matters of that sort, and I think coun-

sel should be required to point out specially.

The Court: If you challenge it, yes.

Q. Did you testify as follows a while ago: "When they asked my judgment of a condition, I would give it to them. Q. Only in response to a request from them? A. Why, I think so; I don't recall any other—— Q. During the twenty years you have no recollection of any voluntary suggestion you made to your principals on these subjects? 4100
A. I don't recall any. Q. Not one? A. No. Q. You wouldn't be surprised to find such a suggestion from you unasked for? A. I don't know; I don't recall any; I don't know whether I would be surprised or not."

Mr. Abbott: I don't think that comes within counsel's suggestion at all.

The Court: Read the question now that is objected to.

(Question repeated by the reporter.)

4101

A. No, I have never made such a statement.

Q. Well, do you now recall that you made such suggestions which you don't recollect then? A. I recollect that independently of the Powder Company and in every other way I try to do my duty all the time; and I may have done the thinking; or I may have gotten lots of suggestions from others, I don't know how these questions came up; certainly, I gave them the very best I had.

Q. When you testified on direct examination that the price was raised at the end of this time from 90 cents to $1.25 you intended us to understand that these prices had been, as a general thing, cut down to 90 cents, didn't you, Mr. Waddell? A. I did not say that.

Q. I know you did not say that, but didn't you intend us to infer that? A. No, I did not intend you to infer anything, you make your own inferences, I had intended to say that that was the low limit and then we went away up to $1.25.

Q. Now, then, do you recollect having stated anything on that subject in the Government case? A. No, I don't know whether I was interrogated on that or not, specifically.

Q. Page 156: "Q. How long before the Indiana
4103 Company had its mills built? A. Several months. Just after the formation of the company Mr. Keeler was asked to take stock in the Indiana Powder Company and notified me of it. I went to Chicago and as an inducement for him not to take stock I offered him a contract for five years at $1.10 per keg, and upon instruction from Eugene du Pont I signed it. That was the price at which the Indiana Powder Company started off their sale of powder. It went down as low as 80 cents a keg until the time we purchased the Indiana. Q. When
4104 was that? A. That was in the latter part of January, 1902; purchased the Indiana and Northwestern at the same time." Do you recall that statement? A. Yes.

Q. Who was this 80-cent man? A. Mr. Maurice Sternberger.

Q. When? A. I can't give you the date.

Q. That was about 1894 or 1895, wasn't it, as we read the other day when we were discussing the Phoenix and the others? A. No; in 1894 he had a 75-cent price—that is in the Phoenix fight; but Maurice was selling around the Southern part of Ohio, and he had a low price, so he told me; I don't know, I didn't see his bills that he—I based that statement on what he told me.

Q. You based that statement that the price went

down to 80 cents a keg simply on the proposition that someone had told you one instance in which they had it? A. Yes, Maurice Sternberger had been my agent for a number of years; he was a prominent man, controlled about fifteen or eighteen coal mines and I had a good deal of faith in what he said.

Q. And you swear he said it, do you? A. What?

Q. You swear that he said it? A. Swear that he said it? 4106

Q. Yes. A. Oh, yes, I do.

Q. When was the date that he had the 80-cent price? A. I don't know.

Q. You mean that it was about 1901, don't you, immediately before the fight of the Indiana—before Indiana sold out, immediately before, wasn't it? A. I don't know when it was.

Q. That was about what you said, wasn't it, "it went down as low as 80 cents along until the time we purchased the Indiana"? A. Until the time we purchased?

Q. "Until the time we purchased"? A. Until— 4107
well, that "until" might have been a year before that, it might have been a month before that or it might have been a day before that, I don't know. What is the date there?

Q. That is what you meant by that sentence, was it? It might have been in 1897 then? A. No, it could not have been then.

Q. Or 1898? A. No, I think it is along towards the latter part of the fight that it went down, but I don't know the date.

Q. But by that statement, "It went down as low as 80 cents a keg until the time we purchased the Indiana," do you mean to tell us that you didn't intend to have inferred at that time that the 80-cent price was a general price? A. No.

4108 Q. You didn't have any such intention? A. No; I didn't intend to let anybody—give anybody any inferences, I intended to say what I did.

Q. You didn't mention the fact that it was only to one customer, and you knew nothing about it except what he told you at that time, did you? A. I did there just like I am doing here, replying to the questions put to me. If that question was put to me I answered it.

4109 Q. I didn't put that question to you, nor did I put the question to you on your direct examination here in which you said the price went down to 90 cents. A. Somebody did.

Q. It was your own counsel. Now, then, what price was paid for the stock in the Indiana Powder Company? A. I don't know; never heard.

Q. Do you know who suggested that sale by the du Ponts or Hazard Powder Company—where they got a chance to purchase it, or whether the proposition came from Mr. Rood—from the other side?

A. I don't know; I didn't know anything about
4110 it at all until after it was done.

Q. You don't know whether they were in reduced circumstances at that time, do you? A. The Indiana?

Q. Yes. A. No, I don't know anything about their business.

Q. On the contrary, you know they were not, don't you? A. I don't know anything about it.

Q. You know that they were pretty prosperous, don't you, at the time they made this trade with the du Ponts and Hazards and others? A. No, I don't know that either.

Q. You know nothing about it? A. I know nothing about it.

Q. Mr. Waddell, you heard the testimony I have read from your direct examination in regard to the

contest against the Indiana Powder Company. Did you intend us, from that testimony, to understand that the Indiana Powder Company was reduced to such circumstances, by competition or otherwise, that they were obliged to sell out to the du Ponts or any one else? A. It is such a long question, I will try to answer it in this way: That I didn't know what the circumstances of the Indiana Powder Company were except what Mr. Rood told me. May I state what that was? 4112

Q. Well, wait a minute. Do you know the date of it? A. Yes; just after he sold out.

Q. I mean can you tell what month it was? A. No; I should think he sold out in January, it was along—I went to Wilmington about April; just before I went to Wilmington. Rood told me why he sold out and that I would be very glad to tell you if it would conform with the question. As to the other, I do think that the struggle that we made against the Indiana Powder Company, not on a segregated territory definitely set aside nor was the territory at the beginning what it was at the close. 4113 It began with the confined trade at Terre Haute. We went in there and made a fight against him on the retailing of powder and it spread him out, and his territory extended to the limits that it occupied at the time he sold. Now, at that time, outside of the trade that Rood reached, the prices were maintained strictly.

Q. My question is whether—what you intended to be the understanding from the testimony you gave on your direct examination in these regards was: Did you intend us to understand from it that we had reduced the Indiana Powder Company to such circumstances that they had to sell out, or didn't you? That is a simple question, Mr. Waddell? A. Well, the——

4114 *R. S. Waddell—Cross*

Q. Yes or no, did you want us to understand that or not? A. I want you to understand just what I said, that is all.

The Court: I know, but he wants an explanation.

The Witness: I can't tell what you are going to——

The Court: Don't you understand the
4115 question? Did you purpose by your answer to convey that understanding?

The Witness: You have got it just right——

Mr. Abbott: If your Honor please, I think the question is rather argumentative and there are so many conclusions there that I think that the witness is entitled to explain.

The Court: He may explain, but he must answer and then he may explain; of course, I mean if the question permits of an ex-
4116 planation, if in the witness' judgment it is necessary.

A. I will say no, then, with the explanation——

Q. Well, as long as you explain it, but not something else, Mr. Waddell. A. That it was not the financial end, but it was because Mr. Rood was unable to renew his five-year contract with the coal operators who had had—his stockholders who had had all the struggle with the mining question, the retailing of powder to his miners, and his stockholders refused to renew for another five years; and his five years was almost up and he had to get out of the business.

Q. That is what he told you, and you referred to a while ago? A. Yes, sir.

Q. Do you mean to say that you claim to say that was what he said to you? A. That was what was in my mind.

Q. And now you have got it off your mind? A. That is what was in my mind and that I told you I knew.

Q. Mr. Waddell, do I understand it to be your present position that there was no trade association from 1891 to 1896? A. No; there was a trade association during that period; there were districts where it was not in active operation constantly, but they held meetings all during that time, and throughout the general country they were associated the same as they always were. 4113

Q. Do I understand that you have any desire to modify your testimony which you gave several days ago to the effect that the association and members of it as a unit made a contest against the Phoenix and the Chattanooga and the Southern? A. No, I think there was an agreement in regard to that district, and that they conferred with each other and co-operated and yet at the same time they competed with each other because of the confusion they got into; there was constant competition between the powder companies, all of them, because of conflicting orders to different agents. 4119

Q. Then your understanding is not entirely in accord with what your counsel has stated here a few minutes ago, that the Association was entirely broken up during that time?

Mr. Abbott: I didn't say that.

A. Entirely absorbed and disbanded? No, I don't think that was the case.

Mr. Abbott: I didn't say that, Mr. Button.

4120

A. (Continuing) I think they held together.

Mr. Button: Then I misunderstood you, Mr. Abbott.

Q. Now, when was the Birmingham Powder Company organized, Mr. Waddell? A. I think that was about 1898; I am not sure as to that.

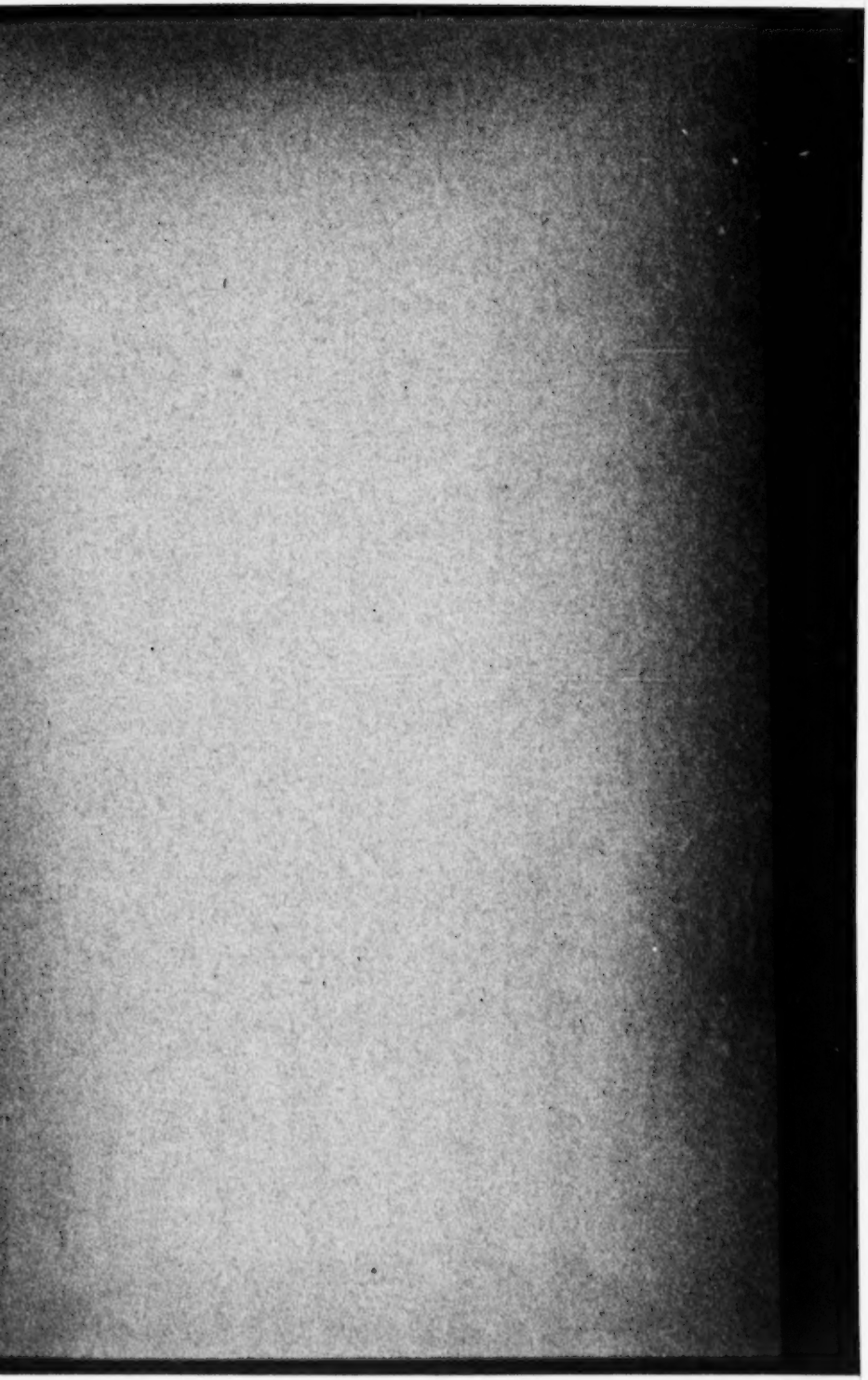
Q. And they operated in territory that your brother F. J. Waddell was particularly familiar

4121 with, did it not? A. Yes, he was more familiar with it than I was, although I knew something of it.

Q. And most of the correspondence from the Cincinnati office in reference thereto was conducted by him? A. From the Cincinnati office? No, I think not. I think he was in California at the time of the Birmingham fight.

Q. And in 1898? A. I don't know; I don't recall.

Q. I think you must be mistaken about that, Mr.

4122 Waddell. A. I don't recall just exactly there, but my impression is that Fred had a good deal to do with that.

Q. I wish you would look over a little correspondence that seems to be copied in this book and see whether you are—which purports to have been signed by him and state whether you are familiar with it, whether you can refresh your recollection as to who was corresponding about the Birmingham fight and as to what the situation in regard to particular prices in that district was (handing book to witness). A. Of course, these letters were written by some one other than myself; I don't know anything about the letters; the contents of the letters—never saw them.